

CROPS HUB, FOOD AND FARMING GROUP

Area 8C, 9 Millbank, c/o Nobel House,
17 Smith Square, London, SW1P 3JR



19 October 2011

To consultees on the attached list

Dear Consultee

CONSULTATION ON “THE WINE REGULATIONS 2011”

I should like to ask for your views on the proposal to revise the Wine Regulations in the UK.

These Regulations provide the basis for the UK to enforce the rules of the EU Wine Regime and thus ensure wine on sale in the UK has been produced correctly and is labelled in a way that is clear and honest.

Some changes have been made to the way the rules are applied to make them more proportionate, reducing the number of criminal sanctions. The scope of the Regulations now covers the whole UK, reducing the need for four separate pieces of legislation, and more relevant powers are made available to enforcement authorities. They also introduce new wine quality schemes in England and Wales which will include arrangements for the production of certain sparkling, as well as still wines, further helping producers safeguard the reputation they are building for these products.

All of these points are covered in more detail below.

Implementation of EU Rules

The UK has committed that as a Member State of the European Union it will introduce and apply EU laws appropriately. In respect of the wine rules, the UK Government played a pro-active role in the 2008 EU Wine Reform discussions, and is content that the outcome from these discussions represents a fair result for all, while incorporating some important concessions for the UK. The rules that stem from these negotiations/reforms are important as they cover all aspects of wine production; effectively from vine to glass. They also help ensure our producers and traders are able to conduct their businesses without facing unfair or illegal competition.

Scope

In partnership with the Devolved Administrations in Northern Ireland, Scotland and Wales, The Wine Regulations 2011 are drafted so that they now cover the whole of the UK. This will no longer require the Devolved Administrations to make parallel legislation in this area, and in so doing removes the need for duplication of effort.

Enforcement and sanctions

Primary responsibility for the enforcement of EU wine rules will remain with the Food Standards Agency (FSA) and its dedicated Wine Standards Team who will continue to cover wine production, import and at wholesale. The FSA will continue to work closely and share knowledge and expertise with Local Authorities, who will remain responsible for the consumer focus and marketing of wines at retail level. The Border Agency/ Her Majesty's Customs and Revenue (HMRC) will continue to be responsible for border related checks on wine and its accompanying documentation. We consider that current arrangements for the application and enforcement of the wine rules offer the best use of our available resources.

The primary function of these Regulations is to give UK authorities the power to enforce the EU and domestic laws for wine.

As part of a wider consideration of sanctions that can be applied when the wine rules have been breached, we considered whether the previous emphasis on 'criminal' rather than 'civil' sanctions reflected a proportionate approach and provided the right level of deterrent. The wine regime is complex and wide-ranging, and hence minor mistakes can occasionally be made. Where these are judged to have been accidental or innocent in nature, and importantly do not pose a direct or subsequent risk to health or consumer understanding, enforcement bodies have historically applied proportionate enforcement action. For example this could be in the form of written advice about a problem and issuance of a requirement for corrective action to be taken. We consider that such a proportionate approach is a valuable tool for enforcement authorities, and have therefore formalised such arrangements in these Regulations by including a range of 'civil' enforcement mechanisms.

Offences

Scope remains for authorities to apply stiff penalties in key areas where failure to apply the rules could become a risk to consumers and / or fraud is detected.

Regulation 14 of the draft Wine Regulations (UK) 2011 makes it an offence to breach any of the following provisions:

- **Article 118m (2) of Council Regulation 1234/2007**, which provides protection for Protected Designation of Origins and Protected Geographical Indications and wines using those protected names against misuse of the name in various ways, and other practices liable to mislead the consumer as to the true origin of the product.
- **Article 118v(1)**, which protects the use of traditional terms used in the wine sector from such misuse.
- **Article 120(c)**, which requires that wine is produced in accordance with Community laws; and

- **Article 158a(2)**, which makes it a requirement that wine imported into the Community and sold, is produced according to agreed international standards such as those set out in bilateral trade agreements with the EU.
- **Article 41 of Commission Regulation (EC) No 436/2009**, which makes it a requirement that producers of wine make accurate records of the processes and practices they have used to produce that wine – in effect providing a visible audit of the wine.

Regulation 14 also makes it an offence to:

- Fail to comply with an enforcement notice or a prohibition notice, or with the EU Regulations at any time after having received a warning notice.
- Intentionally obstruct an authorised officer acting under these or EU Regulations, or to fail to give assistance or information (without reasonable cause); to knowingly provide them with false or misleading advice or appropriate documents.

There is also an offence to disclose information received from HMRC in certain circumstances, but allow a defence where disclosure was considered lawful or that the information had already been made public.

Regulation 15 makes provision for fines where persons are found guilty of offences.

Vineyard register

The EU regulations already require that owners of vineyards register with the FSA when they start producing grapes commercially. Although we have never before stated this in the UK Wine Regulations, the recent growth of vineyard area in the UK has resulted in many new small vineyards appearing. It is important that the FSA have up to date information on new vineyards available to allow them to effectively enforce the Regime. As such these Regulations include a provision that vineyards of more than 0.1 ha must be registered with the Food Standards Agency within 6 months of planting or from the introduction of this Regulation.

Powers of Officers

The powers of enforcement officers have been adapted to accord with current Government best practice and to help ensure that the interests of UK citizens are protected. Enforcement bodies now have scope to apply to a magistrate or their equivalent for a warrant to access premises where there is considered an urgent need, or access has been denied without a valid reason. In practice most enforcement visits are carried out by consensus, and we anticipate that this will continue under these provisions.

Quality Schemes

Government and the United Kingdom Vineyards Association (UKVA) have been working in partnership to introduce some changes to the wine quality schemes incorporated in these Regulations. These changes will help facilitate the process that will allow English and Welsh still and sparkling wine achieve protection under the harmonised EU Protected Designation of Origin (PDO) and Protected Geographical Indication (PGI) quality arrangements, and help to ensure that the growing reputation they are building for their wine is protected in the EU and internationally.

In parallel, the Government and the UKVA have worked together to make changes to the administrative arrangements that underpin the wine quality framework. These changes will

put producers more at the centre of their wine quality schemes and will simplify the process of applying for, and protecting, new protected designations and indications.

Your Views

We invite your views on this draft Regulation and ideas for how we could do things better either this time or in future. Wine is an important commodity in the UK, so do you think we have got the balance of powers and sanctions right for the job that needs to be done? Do you have any views on our proposals to amalgamate the Regulations across the UK rather than have four separate regulations? Do you have any views about including sparkling wine in the current wine quality schemes? We want to hear what you have to say on these points or any others you wish to make.

Consultation plans

The consultation package contains the following documents which can be accessed via:

www.defra.gov.uk/consult/2011/10/19/wine-regulations/

- Consultation letter
- Draft statutory instrument
- List of consultees

I should be grateful if any written comments you have in respect of this consultation could be sent or E-mailed to Ken Meger at the address below by **22 November 2011**

We are keen to ensure that everyone with an interest has the opportunity to express views and opinions on our proposals. In addition to the normal written/e-mailed submission of comments, we also plan to hold three regional stakeholder seminars where we will be able to present our plans for these Regulations and be on hand to answer any questions you may have. The 'seminars' will be held during November in London, Cardiff and York. Details of dates, times and venues will be posted on the Defra wine webpage www.defra.gov.uk/food-farm/food/food-industry/wine-industry

Please call Ken Meger at least one week before the date of the seminar if you wish to attend.

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In line with Defra's policy of openness, at the end of the consultation period copies of the responses we receive may be made publicly available through the Defra Information Resource Centre, Lower Ground Floor, Ergon House, 17 Smith Square, London SW1P 3JR. The information they contain may also be published in a summary of responses.

If you do not consent to this, you must clearly request that your response be treated confidentially. Any confidentiality disclaimer generated by your IT system in e-mail

responses will not be treated as such a request. You should also be aware that there may be circumstances in which Defra will be required to communicate information to third parties on request, in order to comply with its obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations.

The Information Resource Centre will supply copies of consultation responses to personal callers or in response to telephone or e-mail requests (tel: 020 7238 6575, e-mail: defra.library@defra.gsi.gov.uk). Wherever possible, personal callers should give the library at least 24 hours' notice of their requirements. An administrative charge will be made to cover photocopying and postage costs.

Should you have any comments or complaints about the consultation process (as opposed to comments about the issues which are the subject of consultation) they should be addressed to Defra's Consultation Co-ordinator by email at consultation.coordinator@defra.gsi.gov.uk. Details on the Cabinet Office guidance on consultations can be found at <http://www.berr.gov.uk/consultations/index.html>

Please contact either Ken Meger or myself if you have specific questions in relation to this consultation.

I should be grateful if you would pass this consultation letter on to any other organisation you think would be interested.

Yours faithfully

PHILIP MUNDAY