

Rural Affairs and Islands Committee

8th Meeting, 2023 (Session 6), Wednesday, 15 March

Subordinate legislation cover note

Title of instrument:	Alcoholic Beverages, Fruit and Vegetables (Miscellaneous Amendment) (Scotland) Regulations 2023
Type of instrument:	Affirmative
Laid date:	27 January 2023
Reporting deadline:	16 March 2023
Coming into force:	23 April 2023
Motion to approve:	That the Rural Affairs, Islands and Natural Environment Committee recommends that the Alcoholic Beverages, Fruit and Vegetables (Miscellaneous Amendment) (Scotland) Regulations 2023 [draft] be approved.
Instrument drawn to Parliament's attention by DPLRC:	No
Instrument made using powers conferred by:	the Food Safety Act 1990 ; and the Agriculture (Retained EU Law and Data) (Scotland) Act 2020
Supporting documentation:	<ul style="list-style-type: none"> • Instrument - Annexe A • Policy note - Annexe B

Purpose of the Instrument

1. The policy [note](#) states the regulations will amend rules concerning the labelling of alcohol content and vine varieties on wines, and provide flexibility on how the terms "alc" and "vol" can be shown in relation to the numerical alcohol content for all alcoholic drinks. This is in order to comply with the UK free trade agreement with New Zealand.
2. The instrument also amends Article 11(1) of Regulation (EU) No 543/2011 to correct what the policy note describes as minor errors contained in regulation 5(5)

of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (Consequential Modifications) and Agricultural Products, Aquatic Animal Health and Genetically Modified Organisms (EU Exit) (Amendment) Regulations 2022.

Background

3. The UK signed a free trade agreement with New Zealand on 28 February 2022. Before coming into force, both the UK and New Zealand are required to complete their respective domestic procedures for the agreement to come into effect. Once approved by both parliaments, businesses will be able to trade under its terms. In order for the UK to meet the obligations set down in the Agreement, changes need to be made to retained EU Regulations affecting wine and spirits.
4. These changes, as stated in the policy note, were requested by New Zealand to take account of its current labelling practices, making it easier for New Zealand wines to be imported into Great Britain.
5. A consultation on the proposed changes to Regulations affecting wine and spirits ran for three weeks between 2 November and 23 November 2022, receiving ten responses. According to the policy note, the majority of responses were supportive of the changes.
6. Impact assessments have not been carried out because the instrument is not expected to have an impact on businesses, charities or voluntary bodies, or the public sector.
7. The Cabinet Secretary for Rural Affairs and Islands has confirmed that no Business and Regulatory Impact Assessment (BRIA) is necessary on this occasion as the instrument has no financial effects on the Scottish Government, local government or on business.

Effect of the regulations

8. The key effects of the regulations are as follows—
9. **Regulation 2** amends Article 11(1) of EUR 2011/543 to correct minor errors introduced by two regulations. It corrects a cross-reference and reinstates omitted paragraphs of Article 11(1).
10. **Regulation 3** amends Annex 12 of EUR 2011/1169 to allow an alternative indicator ("% alc/vol") to be used to indicate the alcoholic strength of a beverage.
11. **Regulation 4(2)** amends Article 44 of retained Commission Delegated Regulation (EU) No 2019/33 to provide for wine to be marketed with an alcohol content that is shown to a maximum of not more than one decimal point, for example, 12.2%.
12. **Regulation 4(3)** amends Article 50(1) of Regulation (EU) 2019/33 to allow wine and certain other wine sector products with two or more named wine grape

varieties (or their synonyms) to be marketed in Scotland, provided that at least 95% of the product is made from those varieties and the labelling requirements are met.

Consideration by the Delegated Powers and Law Reform Committee

13. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 7 February and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Parliamentary procedure – affirmative instruments

14. The affirmative parliamentary procedure is set out in Chapter 10 of the [Parliament's Standing Orders](#). Instruments subject to the affirmative procedure cannot come into force unless they are approved by Parliament.

15. It is usual practice for subject committees to take evidence from the Scottish Government in advance of considering the instrument. The Committee will take evidence from the Cabinet Secretary and Scottish Government officials at **agenda item 2**.

16. During its formal consideration, a member of the Scottish Government proposes, by motion, that the lead committee recommend that the instrument or draft instrument be approved. The Committee will formally consider the motion during **agenda item 3**.

17. The lead committee must report its recommendation to the Parliament within 40 days of the SSI being laid; where the lead committee recommends the instrument be approved, the Parliamentary Bureau will propose a motion that the instrument be agreed. The deadline for the Committee to report on this instrument is 16 March 2023.

For decision

18. **The Committee is invited to—**

- **take evidence from the Cabinet Secretary and Scottish Government officials on the instrument (agenda item 2);**
- **ask the Cabinet Secretary to move, and then to debate, the motion on the instrument (agenda item 3); and**
- **delegate authority to the Convener to sign off the Committee's report to the Parliament on the instrument.**

**Rural Affairs and Islands Committee clerks
March 2023**

Draft Regulations laid before the Scottish Parliament under section 48(3C) of the Food Safety Act 1990 and section 9(4) of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2023 No.

AGRICULTURE

FOOD

**The Alcoholic Beverages, Fruit and Vegetables (Miscellaneous
Amendment) (Scotland) Regulations 2023**

Made - - - - 2023

Coming into force - - 23rd April 2023

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 16(1)(e) of the Food Safety Act 1990(a) (as read with section 16(3A) of that Act), section 9(1) of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020(b) and all other powers enabling them to do so.

So far as these Regulations are made in exercise of powers under the Food Safety Act 1990, the Scottish Ministers have had regard to relevant advice given by Food Standards Scotland in accordance with section 48(4A) of that Act(c).

In accordance with section 9(5) of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020, the Scottish Ministers have consulted such persons as they consider are representative of the interests of persons likely to be affected by the regulations as they consider appropriate.

There has been consultation as required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of

(a) 1990 c. 16. Section 16(1) was amended by paragraph 8 of schedule 5 of the Food Standards Act 1999 (c. 28) (“the 1999 Act”). Section 16(3A) was inserted by section 174(1) of the Health and Care Act 2022 (c. 31). Amendments made by schedule 5 of the 1999 Act which extend to Scotland are to be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c. 46) (“the 1998 Act”) by virtue of section 40(2) of the 1999 Act. The functions conferred on the Secretary of State under sections 16(1)(e) of the 1990 Act, so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. In so far as not so transferred, and in so far as relating to food (including drink) including the primary production of food, those functions were transferred to the Scottish Ministers by S.I. 2005/849.

(b) 2020 asp 17.

(c) Section 48 was amended by section 4 of the Food (Scotland) Act 2015 (asp 1) (“the 2015 Act”), to substitute references to the Food Standards Agency for Foods Standards Scotland. Section 48(6) was inserted by paragraph 3 of the schedule of the 2015 Act, in its application to Scotland, to read references to the Food Standards Agency as references to Food Standards Scotland. Subsection (4A) was inserted by paragraphs 7 and 21 of schedule 5 of the 1999 Act.

food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety^(a).

In accordance with section 48(3C) of the Food Safety Act 1990^(b) and section 9(4) of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Alcoholic Beverages, Fruit and Vegetables (Miscellaneous Amendment) (Scotland) Regulations 2023 and come into force on 23 April 2023.

(2) These Regulations extend to Scotland only.

Commission Implementing Regulation (EU) No 543/2011

2.—(1) Article 11(1) (conformity checks) of Commission Implementing Regulation (EU) No 543/2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors^(c) is amended as follows.

(2) For “Regulation (EC) 1308/2018” substitute “Regulation (EU) No 1308/2013^(d)”.

(3) At the end insert as new paragraphs—

“The criteria to assess the risk shall include the existence of a conformity certificate referred to in Article 14 issued by a competent authority of a third country where the conformity checks have been approved pursuant to Article 15. The existence of such certificate shall be considered as a factor reducing the risk of non-conformity.

The criteria to assess the risk may also include:

- (a) the nature of the product, the period of production, the price of the product, the weather, the packing and handling operations, the storage conditions, the country of origin, the means of transport or the volume of the lot;
- (b) the size of the traders, their position in the marketing chain, the volume or value marketed by them, their product range, the delivery area or the type of business carried out such as storage, sorting, packing or sale;
- (c) findings made during previous checks including the number and type of defects found, the usual quality of products marketed, the level of technical equipment used;
- (d) the reliability of traders’ quality assurance systems or self-checking systems related to the conformity to marketing standards;
- (e) the place where the check is carried out, in particular if it is the point of first entry into Great Britain, or the place where the products are being packed or loaded;
- (f) any other information that might indicate a risk of non-compliance.”.

(a) EUR 2002/178, was incorporated into domestic law on IP completion day by section 3 of the European Union (Withdrawal) Act 2018 (c. 16) and amended by S.I. 2019/641 and S.I. 2022/377. S.I. 2019/641 came into force on IP completion day by virtue of paragraph 1(1) of schedule 5 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) and was amended before it came into force by S.I. 2020/1504.

(b) Section 48(3C) was inserted by section 174(2)(b) of the Health and Care Act 2022 (c. 31).

(c) EUR 2011/543, amended by S.I. 2019/822 and prospectively amended by S.S.I. 2022/361. There are other amendments not relevant to these Regulations.

(d) EUR 2013/1308, amended by S.I. 2019/821 and S.I. 2019/831 and prospectively amended by S.S.I. 2022/361. There are other amendments not relevant to these Regulations.

Regulation (EU) No 1169/2011 of the European Parliament and of the Council

3. In Annex 12 (alcoholic strength) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers(a), after the first paragraph insert—

“In relation to a beverage marketed in Scotland to which the first paragraph applies, the second sentence of that paragraph is to be read as if at the end there were inserted ‘, or the figure may be followed by ‘% alc/vol’.”.

Commission Delegated Regulation (EU) 2019/33

4.—(1) Commission Delegated Regulation (EU) 2019/33 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation(b) is amended as follows.

(2) In Article 44 (actual alcoholic strength)—

(a) after the first paragraph insert—

“In relation to a product marketed in Scotland to which the first paragraph applies, that paragraph is to be read as if for ‘in percentage units or half units’ there were substituted ‘to not more than one decimal place’.”,

(b) after the third paragraph (taking into account the paragraph inserted by sub-paragraph (a)) insert—

“In relation to a product marketed in Scotland to which the third paragraph applies, the first sentence of that paragraph is to be read as if at the end there were inserted ‘, or the figure may be followed by ‘% alc/vol’.”.

(3) After Article 50(1) (name of wine grape variety) insert—

“1a. In relation to a grapevine product marketed in Scotland to which paragraph 1(a)(ii) applies, the first subparagraph of point (ii) is to be read as if, in the words before the first indent, for ‘100 %’ there were substituted ‘at least 95%’.”.

Name

A member of the Scottish Government

St Andrew’s House,
Edinburgh
Date

(a) EUR 2011/1169, to which there are amendments not relevant to these Regulations.

(b) EUR 2019/33, amended by S.I. 2020/1637. There are other amendments not relevant to these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments in relation to the labelling of alcoholic beverages marketed in Scotland. They also correct minor errors in Article 11(1) of Commission Implementing Regulation (EU) No 543/2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors (EUR 2011/543).

Regulation 2 amends Article 11(1) of EUR 2011/543, to correct minor errors introduced by amendments contained in regulation 5(5) of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (Consequential Modifications) and Agricultural Products, Aquatic Animal Health and Genetically Modified Organisms (EU Exit) (Amendment) Regulations 2022. Regulation 2 corrects a cross-reference and reinstates paragraphs of Article 11(1) which were omitted in error.

Regulation 3 amends Annex 12 to Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers (EUR 2011/1169) to enable an alternative indicator (“% alc/vol”) to be used (instead of one of the other specified indicators) with a figure indicating the actual alcoholic strength of a beverage to which that Annex applies.

Regulation 4(2) amends Article 44 of Commission Delegated Regulation (EU) 2019/33 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation (EUR 2019/33) (“Regulation (EU) 2019/33”)—

- (a) to require the actual alcoholic strength of wine and certain other wine sector products to be indicated to a figure of not more than one decimal point (instead of a requirement that the indication be given in percentage units or half units);
- (b) to enable an alternative indicator (“% alc/vol”) to be used (instead of one of the other specified indicators) with a figure indicating the actual alcoholic strength of wine and certain other wine sector products to which Article 44 applies.

Regulation 4(3) amends Article 50(1) of Regulation (EU) 2019/33 to enable wine and certain other wine sector products on the labels of which two or more wine grape varieties (or their synonyms) are named to be marketed in Scotland where at least 95% of the product (reduced from 100%) has been made from those varieties. This is subject to compliance with existing labelling requirements relating to the naming of those varieties in Article 50(1).

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

POLICY NOTE

THE ALCOHOLIC BEVERAGES, FRUIT AND VEGETABLES (MISCELLANEOUS AMENDMENT) (SCOTLAND) REGULATIONS 2023

SSI 2023/XXX

The above instrument was made by the Scottish Ministers in exercise of powers conferred by section 16(1)(e) of the Food Safety Act 1990 (as read with section 16(3A) of that Act), section 9(1) of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 and all other powers enabling them to do so. The instrument is subject to the affirmative procedure.

Summary Box

Purpose of the instrument: These Regulations will amend rules concerning the labelling of alcohol content and vine varieties on wines, and add flexibility on how the terms 'alc' / 'vol' can be shown in relation to the numerical alcohol content for all alcoholic drinks. These Regulations will also make some corrections to Article 11(1) of Regulation (EU) No 543/2011 due to a minor error in a recent statutory instrument.

Policy Objectives

The United Kingdom and New Zealand have agreed that the trade in wine and spirits between the parties should be conducted under terms set out in Annex 7A to the UK-NZ Free Trade Agreement. In order for the UK to meet the obligations set down in the Agreement, changes need to be made to retained EU Regulations affecting wine and spirits.

This instrument will amend Annex 12 of retained EU law Regulation (EU) No 1169/2011 of the European Parliament and the Council to allow the term 'alc/vol' to be used after the alcohol figure displayed on the label of any alcoholic beverage, for example 12.5% alc/vol. This has not been permitted previously.

These changes were requested by New Zealand to take account of its current labelling practices making it easier for New Zealand wines to be imported into Great Britain.

This change will take account of requirements set out in paragraph 12 of Section A (wine) and paragraph 7 of Section B (distilled spirits) of Annex 7A to the UK-NZ FTA and implement the new measures for all alcohol sold on the domestic market. This will provide all alcohol (spirits, beer and cider) producers and operators the same provision allowing greater flexibility with labelling products.

This instrument will also amend Article 44 of retained Commission Delegated Regulation (EU) No 2019/33 to provide for wine to be marketed with an alcohol content that is shown to a maximum of not more than one decimal point, for example, 12.2%.

Current rules require that alcohol content on wine be shown only in whole or whole and half units e.g. 12 % or 12.5%, as they will comply with the requirement that the alcoholic content is shown to not more than one decimal place.

This change will take account of requirements set out in paragraph 12 of Section A (wine) of Annex 7A to the UK-NZ FTA and implement the new measures for all wine sold on the domestic market.

This will bring the labelling of alcohol content for wine in line with other alcoholic drinks and allow greater flexibility with labelling products to producers.

This instrument will also amend Article 50 (1)(a)(ii) of retained Commission Delegated Regulation (EU) No 2019/33 to allow wine to be marketed showing multiple grape varieties on the label if the use of the stated varieties total 95% of the varietal content of the wine.

Current rules require that where multiple grape varieties are shown on the label they must total 100% of the grape varieties used in its production.

This provision will take account of the requirement set out in paragraph 14 of Section A of Annex 7A to the UK-NZ FTA.

This change was requested by New Zealand to take account of its current labelling Practices making it easier for New Zealand wines to be imported into Great Britain.

Finally, the instrument amends article 11 of Retained EU law Regulation (EU) No 543/2011 to correct minor errors contained in regulation 5(5) of the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (Consequential Modifications) and Agricultural Products, Aquatic Animal Health and Genetically Modified Organisms (EU Exit) (Amendment) Regulations 2022.

Consultation

The consultation ran for three weeks from the 2nd November – 23rd November 2022. There were ten responses, the majority of which were supportive of the changes.

For allowing alcohol to be labelled to one decimal place, there was strong support from a producer of No/Low wines, stating that it would increase clarity and transparency to consumers. There is strong support for this by businesses, stating that it will allow flexibility whilst retaining the option to label at 0.5%.

For the labelling of multiple grape varieties, there was support to move to 95% accuracy of grapes on the label, as this will allow more flexibility on labelling for producers and not have an impact on consumers.

For alcohol labelling of ABV/Vol, there were no comments that raised serious concerns with the changes. Most respondents noted that the changes would allow for extra flexibility.

The Wine and Spirits Trade Association (WSTA) is content and supportive of all changes, noting they welcome the increased flexibility, reducing the need for additional labels that are costly to industry.

There were two respondents who were concerned that only labelling of 95% of the content grape varieties would deviate from the International Organisation of Vine and Wine (OIV) standards, which requires 100% of the grapes to be accounted for. The UK is a member; however, it is not obligatory for the us to accept all OIV standards into law, these are only recommendations and members often deviate.

Impact Assessments

Impact assessments have not been carried out because the instrument is not expected to have an impact on business, charities or voluntary bodies, or the public sector.

The changes being introduced here are flexibilities designed to make retained rules that apply in Scotland compatible with those of New Zealand. Businesses will still have the option to label their products as they currently do.

No equality impact assessment has been undertaken as this instrument does not affect people with protected characteristics.

Financial Effects

The Cabinet Secretary for Rural Affairs and Islands confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Directorate for Agriculture and Rural Economy

January 2023