EXPLANATORY MEMORANDUM TO

THE WINE (AMENDMENT) REGULATIONS 2021

2021 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for the Environment Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 Following the UK departure from the EU Single Market and Customs Union, the European Union and United Kingdom, Trade and Co-operation Agreement (TCA) now sets out the basis for trade in wine between Great Britain and the European Union.

2.2 These 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, it will amend rules concerning lot marking and import and export certification arrangements for wine products and put in place transitional marketing arrangements.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England, Wales, and Scotland.

4.2 The territorial application of this instrument is England, Wales, and Scotland except for regulation 4, which is England only.

5. European Convention on Human Rights

5.1 Victoria Prentis MP Minister of State has made the following statement regarding Human Rights:

"In my view the provisions of the Wine (Amendment) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 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.

6.2 This Regulation will amend the following domestic and retained EU legislation to ensure rules concerning lot marking, import and export certification arrangements and

transitional marketing arrangements meet the requirements set down in Annex 15 of the TCA.

- 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.

7. Policy background

What is being done and why?

7.1 The European Union and the United Kingdom have agreed that the trade in wine between the parties should be conducted under terms set out in Annex 15 of the TCA. This was signed on 1 January 2021 and entered into force on 1 May 2021. Changes need to be made to domestic and retained EU law to provide for the application of provisions contained in the TCA in so far as that relates to wine traded between the parties.

7.2 Article 4(3) of Annex 15 to the TCA concerns rules applying to the lot marking of wine. Lot marking is an important tool for tracing wine sector products that have been produced, prepared or packaged under the same conditions. This regulation will make the necessary changes needed to implement the TCA by amending the Food (Lot Marking) Regulations 1996 (S.I. 1996/1502). The changes will ensure that lot marking arrangements continue to function in trade between the UK and EU. Provisions will also permit EU wine to be marketed in Great Britain bearing a lot code that complies with EU law in a Member State on lot codes.

7.3 It will implement Article 5 of Annex 15 to the TCA. This concerns transitional arrangements that will apply in respect of the labelling and marketing of wines that, at the date of entry into force of the TCA, had been produced, described and labelled in accordance with the rules existing at the time. Wine products can have an extended shelf life and their quality and value can appreciate over time. Hence the storing (cellaring) wines is a common practice in the industry. It is important that the introduction of new rules do not undermine that industry by rendering products unmarketable because they do not meet the wine and food information rules at the time that they are marketed. This provision will ensure that wines that have already been produced but have not yet been released to the market, or those that are already in the supply chain can continue to be sold through, on the basis they met the necessary requirements in force before the TCA was implemented. This will be done by amending the Wine Regulations 2011 (S.I. 2011/2936) and the Food Information Regulations 2014 (S.I. 2014/1855).

7.4 It will also implement Article 3 of Annex 15 to the TCA in relation to the export of GB wine to an EU Member State and the import of EU wine into GB. As regards the export of GB wine to an EU Member State, it will put in place supervision, inspection and authentication provisions to underpin the new simplified certification arrangement that will apply to that wine. This will be done by amending Commission Delegated Regulation (EU) 2018/273.

7.5 As regard the importation of wine into GB, it will make changes implementing, and related to Article 3 of the TCA. This will be achieved by omitting Article 90(3) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council and making consequential amendments to that Regulation and Commission Delegated Regulation (EU) 2018/273. This will mean that EU wines and other third country wines imported into Great Britain that comply with Article 90(1) of Regulation (EU) No 1308/2013 will not be subject to the presentation of a certificate and analysis report of the type mentioned in Article 90(3) of that Regulation which is commonly known as a VI-1 certificate.

7.6 The UK has taken the decision that VI-1 certificates, together with simplified versions of that certificate including that set out in the TCA, serve no purpose to business or the consumer, and simply add unnecessary costs to the trade in wine. The Government has therefore taken the decision to remove this requirement not only for EU wines but for all wine imported to GB. In doing this the UK will treat all third countries' wines in the same way.

7.7 The instrument does not extend to Northern Ireland.

7.8 As regards GB wines moved to NI, the provisions inserted as Section 1A of Chapter 4 to retained Commission Delegated Regulation (EU) 2018/273 by the instrument do not apply to GB wine being moved from GB to NI. Following the publication of the Command Paper - Northern Ireland Protocol: the way forward in July, the UK and EU are currently negotiating the future of the Northern Ireland Protocol. The provisions in the instrument relating to NI will be looked at again once those negotiations have been concluded. In the meantime, we do not anticipate this will have any significant effect on trade in wine between Great Britain and Northern Ireland.

7.9 As regards the movement of wine from NI to GB, no documentation will be required under retained Regulation (EU) 1308/2013 and retained Commission Delegated Regulation (EU) 2018/273 when wine (of any origin) is moved into GB from NI. The position is the same for wine imported into GB from a Member State of the EU and any other third country.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the European Union (Withdrawal) Act.

8.2 This instrument does however relate to the implementation of certain provisions contained in Annex 15 of the TCA as set out in section 7 of this EM. It will use powers conferred by section 31(1)(a) and (b) of, and paragraph 27 of Schedule 5 to, the European Union (Future Relationship) Act 2020 as a basis to make the necessary changes to domestic and retained EU legislation to achieve this.

9. Consolidation

9.1 This is not a consolidating instrument.

10. Consultation outcome

10.1 The Government undertook a 3-week consultation on these legislative proposals. The consultation was posted on GOV.UK but we also drew it 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. We

have also liaised closely with the devolved Governments concerning scope and content.

10.2 15 responses were received, and these were overwhelmingly positive of our proposals, especially those concerning the removal of wine import certification (VI-1s). 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 and wanted the Government to support moves to reduce or remove those barriers.

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

10.4 Comments on the transition period arrangements focussed on the length of time this should be provided for. However most agreed that a 2-year transition period for wholesalers and producers would be sufficient time for businesses to adjust.

11. Guidance

11.1 The Government intends to put the necessary guidance regarding measures contained in the instrument on GOV.UK once the instrument has been approved by Parliament.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument 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.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

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

14. Monitoring & review

14.1 As this instrument is made under the European Union (Future Relationship) Act 2020, no review clause is required.

14.2 The instrument will ensure that the UK has implemented provisions necessary to apply Annex 15 to the TCA dealing with the trade in wine. Trade in wine is an economically important area for UK and the Government will continue to play close attention to this and specifically the provisions concerning transitional arrangements and lot marking of wines.

15. Contact

15.1 Philip Munday at the Department for Environment, Food and Rural Affairs. Telephone: 0208 026 3885 or email: philip.munday@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Ananda Guha, Deputy Director for Food Exports, Promotion and Partnerships, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Victoria Prentis MP, Minister of State at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.