EXPLANATORY MEMORANDUM TO

THE WEIGHTS AND MEASURES (INTOXICATING LIQUOR) (AMENDMENT) REGULATIONS 2024

2024 No. 641

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business and Trade (the Department) and is laid before Parliament by Command of His Majesty.

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

2. Declaration

2.1 Kevin Hollinrake MP, Minister of State at the Department for Business and Trade, confirms that this Explanatory Memorandum meets the required standard.

2.2 Craig Watson, Deputy Director, Borders, Accreditation, Measurement, and Standards Policy, Office for Product Safety and Standards, at the Department for Business and Trade, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Lucy Ryde at the Department for Business and Trade can be contacted with any queries regarding the instrument, email: LegalMetrologyPolicy@businessandtrade.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument allows prepacked still wine and prepacked sparkling wine to be sold in a greater range of sizes. It does this by amending the legislation that requires alcoholic drinks to be sold only in fixed sizes, known as specified quantities.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Scotland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales and Scotland.

5. Policy Context

What is being done and why?

5.1 Most alcoholic drinks can be sold only in fixed 'specified' quantities. Legislation sets out the quantities that alcohol can be sold in, both when sold prepacked (in a bottle or can, for example) and non-prepacked (which is typically sold by the glass). It is a criminal offence to sell those alcohols in sizes which are not listed in the legislation as specified sizes.

5.2 The SI will introduce new specified quantities for prepacked still wine and prepacked sparkling wine. The changes mean that prepacked still wine can be sold in 200ml and 568ml, and prepacked sparkling wine can be sold in 500ml and 568ml.

5.3 The amendments support the wine sector by bringing more consistency between the quantities specified for still wine and sparkling wine. Inconsistency between the specified sizes had been causing production issues for manufacturers of single-serve canned wine. Sparkling wine can currently be sold in 200ml, which is a convenient size for canned wine producers but still wine cannot. The amendment helps to resolve production issues by permitting still wine to be sold in 200ml.

5.4 By increasing the range of sizes that prepacked still wine and sparkling wine can be sold in, the SI will create more choice for businesses and consumers, and opportunities for innovation.

5.5 Quantities of non-prepacked alcohol are not affected by these changes.

5.6 Still and sparkling wine packaged in accordance with these new regulatory requirements will be able to be sold by retailers in Northern Ireland when moved under the Northern Ireland Retail Movement Scheme.

What was the previous policy, how is this different?

5.7 Previously, prepacked still wine could not be sold in 200ml or 568ml, and prepacked sparkling wine could not be sold in 500ml or 568ml. This SI will amend the legislation to allow these sizes to be sold.

5.8 The legislation which regulates alcohol quantities is the Weights and Measures (Intoxicating Liquor) Order 1988. The specified quantities for prepacked alcohol are listed in Schedule A1, and it is a criminal offence to sell those alcohols in quantities which are not listed.

5.9 This SI is required because the Weights and Measures (Intoxicating Liquor) Order 1988 has to be amended to allow the new sizes to be sold.

6. Legislative and Legal Context

How has the law changed?

6.1 Schedule A1 of the Weights and Measures (Intoxicating Liquor) Order 1988 which sets out the lists of specified quantities for prepacked alcohols is assimilated law (which is domestic law previously known as retained EU law but without the EU law interpretive features applied to it (supremacy, general principles of EU law and rights retained under section 4 of the European Union (Withdrawal) Act 2018), after the end of 2023). The Retained EU Law (Revocation and Reform) Act 2023 introduced new powers to amend assimilated law. This SI uses the revoke and replace power in section 14(2) of the Retained EU Law (Revocation and Reform) Act 2023 to revoke the current lists of specified quantities in Schedule A1 of the Weights and Measures (Intoxicating Liquor) Order 1988 for both prepacked still and sparkling wine and replace them with new lists which include the new specified quantities.

6.2 The territorial extent and application of the regulations is England and Wales and Scotland. However still and sparkling wine packaged in accordance with these new regulatory requirements will be able to be sold by retailers in Northern Ireland when moved under the Northern Ireland Retail Movement Scheme. This is due to the combined operation of the United Kingdom Internal Market Act 2020's mutual recognition principle and the Northern Ireland Retail Movement Scheme.

Why was this approach taken to change the law?

6.3 As the changes are relatively minor, amending the Weights and Measures (Intoxicating Liquor) Order 1988 is more appropriate and proportionate than replacing it with new legislation. The amendments could have been made using powers under section 22 of the Weights and Measures Act 1985 but, given that the provisions being amended are assimilated law and the changes will decrease regulatory restriction, it was decided to use the revoke and replace power in section 14(2) of the Retained EU Law (Revocation and Reform) Act 2023 instead.

7. Consultation

Summary of consultation outcome and methodology

7.1 Following the 27 December 2023 announcement of the proposal for new specified quantities for prepacked still and sparkling wine, the Department for Business and Trade consulted with key organisations that were representative of interests most affected by the regulatory changes. This included discussions with wine sector businesses and trade bodies who were invited to ask members to provide views and data which informed the de minimis assessment. The proposal to align the existing sizes for prepacked wine was broadly welcomed.

8. Applicable Guidance

8.1 The GOV.UK guidance page[1] on specified alcohol quantities will be updated to reflect the new changes. Guidance about the changes will be emailed to relevant organisations in Great Britain and Northern Ireland.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment (IA) has not been prepared for this instrument because the impacts of The Weights and Measures (Intoxicating Liquor) (Amendment) Regulations 2024 are expected to be below the de-minimis threshold. The impact of this instrument is limited to the costs of businesses familiarising themselves with the updated regulations and the impacts on affected businesses' profit margins.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because of the optional nature of the new provisions.

9.3 There is no, or no significant impact on small or micro businesses who will be able to adopt the new provisions if they choose to do so.

9.4 There is no need to exempt small and micro businesses from the requirements of regulation as they are optional in nature with no legal obligation on business of any size to adopt them.

9.5 There is no, or no significant, impact on the public sector because of the optional nature of the new provisions.

[1] https://www.gov.uk/weights-measures-and-packaging-the-law/specified-quantities

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Department does not intend to monitor this instrument.

10.2 As this instrument is made under the relevant European Union Acts (as defined at 13.1), no review clause is required.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument was laid in draft under its current title for sifting by the Sifting Committees on 19 March 2024. Both the European Statutory Instruments Committee and the Secondary Legislation Scrutiny Committee have confirmed agreement with the use of the negative procedure.

11.2 It is being made under the negative procedure as the amendment is minor and uncontroversial. Its scope is limited in that it provides more optional choice for businesses (and consumers as a result) but does not introduce any obligations. It amends an existing criminal offence only to the extent that it removes the new specified quantities from scope so that it will no longer be an offence to sell in them. The instrument will come into force on 19 September.

12. European Convention on Human Rights

12.1 Kevin Hollinrake MP, Minister of State at the Department for Business and Trade, has made the following statement regarding Human Rights:

"In my view the provisions of The Weights and Measures (Intoxicating Liquor) (Amendment) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is made under Section 14(2) of the Retained EU Law (Revocation and Reform) Act 2023 and therefore relates to the reform of assimilated law. The Minister has made any relevant statements, below, under the 2023 Act. The instrument forms part of the Government's Smarter Regulation programme. It will reduce burdens on business and deliver greater choice to consumers through an update to the quantities wine can be sold in.

13.2 Kevin Hollinrake MP, Minister of State at the Department for Business and Trade, has made the following statement regarding use of legislative powers in the Retained EU Law (Revocation and Reform) Act 2023:

"In my view the Weights and Measures (Intoxicating Liquor) (Amendment) Regulations 2024 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)."

13.3 This is the case because the instrument is introducing optional changes to improve business and consumer choice. There is no legal obligation to make use of these new choices and take up will be limited to those that see a benefit in doing so.