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SCOTTISH STATUTORY INSTRUMENTS

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**2002 No. 325**

**The Common Agricultural Policy  
(Wine) (Scotland) Regulations 2002**

**PART II**

**GENERAL PROVISIONS**

**Official functions and enforcement**

**3.**—(1) Subject to the provisions of this regulation, local authorities, the Scottish Ministers, the Commissioners and the Wine Standards Board are hereby designated as the authorities responsible for ensuring compliance with the Community provisions.

(2) Each local authority shall secure the enforcement of the relevant Community provisions in so far as they relate to the retail sale of products within its area.

(3) The Scottish Ministers, the Commissioners and the Wine Standards Board shall secure the enforcement of the relevant Community provisions in so far as they relate to the importation and exportation of any wine-sector product into Scotland from a third country or from Scotland to a third country.

(4) The Scottish Ministers and the Wine Standards Board shall secure the enforcement of the relevant Community provisions in so far as they relate to any matter not mentioned in paragraphs (2) or (3) above.

**Definition of medium dry**

**4.** For the purposes of Article 14(7)(b) of Commission Regulation 3201/90, wine may be labelled and described as “medium dry” if it has a residual sugar content not exceeding 18 grams per litre where the total acidity content of that wine expressed as grams of tartaric acid per litre is not more than 10 grams per litre below its residual sugar content.

**Vine varieties**

**5.** For the purposes of Article 19(1) and (2) of Council Regulation 1493/1999 and Article 20 of Commission Regulation 1227/2000, the vine varieties classified for the production of wine in Scotland are those specified in Schedule 10.

**Geographical indications for table wine**

**6.**—(1) In pursuance of Article 51(3) of Council Regulation 1493/1999, the use of a geographical indication for the designation of table wine produced in any part of Scotland is prohibited unless that table wine is produced—

- (a) wholly from one or more of the varieties of vine specified in Schedule 10; and
- (b) subject to paragraph (2) below, exclusively from grapes harvested in the geographical unit the name of which is used for the designation of that table wine.

(2) Notwithstanding paragraph (1)(b) above, a geographical indication may be used to designate a table wine obtained by the coupage of wines as permitted by Article 51(2) of Council Regulation 1493/1999.

(3) In paragraph (1)(b) above, “geographical unit” means a precisely demarcated area which—

- (a) is a part of Scotland; and
- (b) falls within the definition of a “geographical unit which is smaller than the Member State” in Article 51(1) of Council Regulation 1493/1999.

(4) Subject to point A, paragraph 2, of Annex VII to Council Regulation 1493/1999, no geographical indication other than the name of a geographical unit as specified in this regulation shall be used on the labelling or advertising of a table wine produced in any part of Scotland.

### **Powers of authorised officers**

7.—(1) An authorised officer may, on producing, if so required, some duly authenticated document showing the authority of that officer, at any reasonable time enter any land or vehicle (other than where used solely as a dwelling), for the purpose of ascertaining whether any offence under these Regulations has been or is being committed or whether any offence under the Common Agricultural Policy (Wine) Regulations 1993(1), 1994(2), 1995(3) or 1996(4) has been committed.

(2) An authorised officer who has entered any land or vehicle in accordance with paragraph (1) above may, for the purpose specified in that paragraph or for the purpose of securing evidence of any such offence which the officer has reason to believe is or may be being, or has been or may have been, committed—

- (a) inspect any materials or articles found in or on that land or vehicle;
- (b) examine any register, record or document—
  - (i) which any person is required to keep under any relevant Community provision, or
  - (ii) which is in the possession or under the control of any person,
 and may take copies of any such register, record or document, or of any entry in any such register, record or document and where any such register, record or document is kept by means of a computer, have access to, and inspect the operation of, any computer and any associated apparatus or material which is or has been in use in connection with that register, record or document and require such register, record, document or entry to be produced in a form in which it may be taken away;
- (c) seize and retain any such register, record, document or entry which the authorised officer has reason to believe may be required as evidence in proceedings under these Regulations or under the Common Agricultural Policy (Wine) Regulations 1993, 1994, 1995 or 1996;
- (d) undertake an inventory of products and of anything which may be used in the preparation of products; and
- (e) purchase or take samples of any product and of anything which may be used for the preparation of any product.

(3) An authorised officer who has procured a sample of any product may analyse or examine that sample or have that sample analysed or examined.

(4) An authorised officer entering any land or vehicle by virtue of this regulation may be accompanied by such other persons as the officer considers necessary.

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(1) S.I.1993/517, amended by S.I. 1993/3071 and revoked by S.I. 1994/674.

(2) S.I. 1994/674, revoked by S.I. 1995/615.

(3) S.I. 1995/615, revoked by S.I. 1996/696.

(4) S.I. 1996/696, amended by S.I. 1997/542, 1998/453 and 1999/482 and revoked by regulation 19 of these Regulations.

## **Control on movement**

**8.—(1)** Where an authorised officer inspects any wine-sector product, the officer may prohibit the movement of the product if the officer has reason to believe that—

- (a) an offence has been, is being or is likely to be committed in respect of it by contravention of, or failure to comply with, any relevant Community provision referred to in columns 1 or 2 of Part I, II, IV or VIII of Schedule 9; and
- (b) there is or is likely to be a risk to public health in relation to that product or there has been or is likely to be any fraudulent treatment of that product.

(2) An authorised officer who exercises the power conferred by paragraph (1) above shall, without delay, give to the person who appears to the officer to be in charge of the wine-sector product concerned notice either in writing or in electronic form—

- (a) specifying the wine-sector product in relation to which the power has been exercised;
- (b) stating that the wine-sector product may not be moved without the consent of an authorised officer which may be given in writing or in electronic form;
- (c) specifying the relevant Community provision in respect of which the officer has reason to believe that an offence has been, is being or is likely to be committed;
- (d) specifying whether the officer considers that it would be practicable for steps to be taken to persuade the officer that the officer no longer has reason for that belief and, if so, what those steps should be.

(3) Where a notice described in paragraph (2) above is given by an authorised officer of the Wine Standards Board, that notice shall also contain information of—

- (a) the right of the owner of the wine-sector product concerned, conferred by regulation 10, to have the giving of that notice reviewed, as to how that right may be exercised and of the effect of exercising that right; and
- (b) the duty imposed by paragraph (5) below.

(4) Where a notice described in paragraph (2) above is given by an authorised officer of an appropriate enforcement authority other than the Wine Standards Board that notice shall also contain information of—

- (a) the right of the owner of the wine-sector product concerned, conferred by regulation 11, to have the giving of that notice reviewed, and as to how that right may be exercised, and of the effect of exercising that right; and
- (b) the duty imposed by paragraph (5) below.

(5) When the person in charge of a wine-sector product becomes aware of a prohibition on the movement of that product under regulation 8(1), that person shall without delay notify the relevant enforcement authority of the name and address of the owner of the wine-sector product concerned.

(6) When the relevant enforcement authority receives notification of the name and address of the owner of the wine-sector product concerned, the enforcement authority shall, without delay, give a notice under paragraph (2) to the owner, unless the enforcement authority has already given such notice under paragraph (7) below.

(7) If the person to whom the officer gives notice does not appear to the officer to be the owner of the wine-sector product concerned or an agent, contractor or employee of the owner, the officer shall use best endeavours to give a notice under paragraph (2) above additionally to the owner as soon as possible, unless the enforcement authority has already given such notice under paragraph (6) above.

(8) An authorised officer may affix to any wine-sector product in relation to which the power conferred by paragraph (1) above has been exercised, or to any container in which the wine-sector product is packed, a label warning of the exercise of the power.

(9) An authorised officer who is satisfied that the steps specified in the notice under paragraph (2) (d) above have been taken shall remove the prohibition on movement imposed pursuant to paragraph (1) above.

### **Consent to movement**

**9.—(1)** An authorised officer may, at any time, give written consent to the movement of a controlled wine-sector product.

(2) An authorised officer shall, upon request, give written consent to the movement of a controlled wine-sector product if the officer, or another authorised officer, has been given a written undertaking to the effect that—

- (a) the wine-sector product will be moved to a place approved by an authorised officer; and
- (b) the wine-sector product will not be moved from that place without the written consent of an authorised officer.

(3) A consent given by an authorised officer under this regulation shall—

- (a) specify the wine-sector product to which it relates; and
- (b) state that the wine-sector product continues to be controlled.

(4) An authorised officer who has been requested to give a consent under this regulation, and who refuses to do so, shall communicate that refusal together with notice of the right, conferred by regulation 10 or 11, to have that refusal reviewed, and an explanation as to how that right may be exercised and the effect of exercising that right.

### **Review of prohibitions etc. on movement of wine-sector products by Wine Standards Board**

**10.—(1)** This regulation applies where an authorised officer of the Wine Standards Board—

- (a) has given to a person who appears to the officer to be in charge of a wine-sector product a notice under regulation 8(2); or
- (b) has refused to give consent to the movement of a controlled wine-sector product under regulation 9.

(2) The owner of the wine-sector product concerned may make a request either in writing or in electronic form to the Chief Executive of the Wine Standards Board for the Chief Executive to review the giving of the notice or refusal.

(3) Where a request for the review of a notice or of a refusal is received by the Chief Executive of the Wine Standards Board the Chief Executive shall within fourteen days from the receipt by the Chief Executive of the request—

- (a) afford the aggrieved person an opportunity of making representations to the Chief Executive;
- (b) following consideration of those representations review the notice or refusal; and
- (c) communicate the Chief Executive's decision on the review together with a statement giving the full reasons for the decision to the aggrieved person.

(4) Where a person is dissatisfied with the decision of the Chief Executive of the Wine Standards Board on a review, that person may make a request either in writing or in electronic form to the Chairman of the Wine Standards Board for a further review by the Wine Standards Board (which, for the avoidance of doubt, shall not include the Chief Executive) of the giving of the notice or of the refusal.

(5) The procedure and quorum for a meeting of the Wine Standards Board considering a request for the review of a notice or of a refusal under this regulation shall be such as it determines.

(6) The Wine Standards Board shall communicate its decision on the review together with a statement giving the full reasons for the decision to the aggrieved person.

(7) Where review of the giving of the notice or refusal is requested the Chief Executive of the Wine Standards Board or the Wine Standards Board, as the case may be, shall, if satisfied that the decision of the authorised officer to give the notice or refuse consent was not justified, cause the prohibition on movement and the notice to be withdrawn or, as the case may be, give consent to the movement of the controlled wine-sector product concerned.

### **Review of prohibitions etc. on movement of wine-sector products by enforcement authorities other than the Wine Standards Board**

**11.**—(1) This regulation applies where an authorised officer of an appropriate enforcement authority other than the Wine Standards Board—

- (a) has given to a person who appears to the officer to be in charge of a wine-sector product a notice under regulation 8(2); or
- (b) has refused to give consent to the movement of a controlled wine-sector product under regulation 9.

(2) The owner of the wine-sector product concerned may each make a request either in writing or in electronic form to the relevant enforcement authority for the enforcement authority to review the giving of the notice.

(3) Where a request for the review of a notice or of a refusal is received by the appropriate enforcement authority, the enforcement authority shall—

- (a) afford the aggrieved person an opportunity of making representations for consideration by an officer of the enforcement authority who has not been involved in the initial decision who will prepare a report following consideration of those representations;
- (b) supply a copy of the report by that officer to the aggrieved person;
- (c) consider the report by that officer before making a decision on the review; and
- (d) communicate the decision on the review together with a statement giving the full reasons for the decision to the aggrieved person.

(4) The enforcement authority shall, if satisfied that the decision of the authorised officer to give the notice or refuse consent was not justified, cause the prohibition on movement and the notice to be withdrawn or, as the case may be, give consent to the movement of the controlled wine-sector product concerned.

### **Authorised officer acting in good faith**

**12.**—(1) Subject to paragraph (2) below, an authorised officer or a person accompanying an authorised officer shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of the functions conferred by these Regulations if the court is satisfied that—

- (a) the act was done in good faith;
- (b) there were reasonable grounds for doing it; and
- (c) it was done with reasonable skill and care.

(2) Nothing in paragraph (1) above shall be construed as relieving an enforcement authority from any liability in respect of the acts of its authorised officers.

(3) Where a claim has been made against an authorised officer in respect of an act done by the officer in the purported exercise of the functions conferred by these Regulations and the circumstances are such that the officer is not legally entitled to require indemnification from the

enforcement authority, the authority may, nevertheless, indemnify the officer against the whole or part of the claim and any expenses, if the authority is satisfied that—

- (a) the act was done in good faith;
- (b) there were reasonable grounds for doing it; and
- (c) it was done with reasonable skill and care.

**Power to require analysis or examination**

13.—(1) The court before which any proceedings are brought for an offence under these Regulations may, if it thinks fit for the purposes of the proceedings, cause any article which is the subject of the proceedings, and, if it has already been analysed or examined, is capable of being further analysed or examined, to be sent to a food analyst or food examiner, who shall make such analysis or examination as is appropriate and transmit to the court a certificate of the result thereof.

(2) If in a case in which an appeal is brought no action has been taken under paragraph (1) above in respect of a particular article, the provisions thereof shall apply as respects that article in relation to the court by which the appeal is heard.

(3) Any certificate of the results of an analysis or examination, which, in the course of proceedings is transmitted by a food analyst or food examiner under this regulation, shall be signed by that food analyst or food examiner, but the analysis or examination may be made by any person acting under the direction of the food analyst or food examiner by whom the certificate is signed.

(4) In any proceedings under these Regulations, the transmission to the court under this regulation or production by one of the parties—

- (a) of a document purporting to be a certificate given by a food analyst or food examiner; or
  - (b) of a document supplied to that party by the other party as being a copy of such a certificate,
- shall be sufficient evidence of the facts stated in it unless any party to the proceedings requires that the person by whom the certificate is signed be called as a witness.