



BRIEFING NOTE: VERIFICATION OF SCOTCH WHISKY

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#SupportScotch



“Scotch Whisky” is protected as a “Geographical Indication” (“GI”) under UK and EU law and in many other countries. GIs were first formally recognised in the World Trade Organisation Agreement on Trade Related Intellectual Property (“WTO TRIPS”) in 1994 and all members of the WTO are required to protect GIs from misuse. This provides considerable assistance in protecting Scotch Whisky from products that are falsely presented as whisky produced in Scotland.

Whilst not required to do so under WTO TRIPS, many countries have introduced registers for GIs and the Scotch Whisky Association is registering “Scotch Whisky” as a GI in as many countries as possible. In addition, Free Trade Agreements regularly provide for the mutual recognition, registration and protection of wine and spirit GIs, including Scotch Whisky.

GI status is of immense commercial value to the Scotch Whisky industry. It enables the Industry to satisfy governments and the public worldwide that Scotch Whisky is produced according to strict standards enforced by the UK government. For example, if an age claim appears on a label it is guaranteed to be correct.



LEGAL REQUIREMENTS

Under UK and EU law, the status of “Scotch Whisky” as a registered GI depends upon:

A Product Specification (formerly known as a Technical File), lodged with the relevant authorities, which includes the rules relating to the production and labelling of Scotch Whisky, and

A Verification Scheme, the purpose of which is to confirm, before it is placed on the market, that Scotch Whisky complies with the specifications in the Product Specification.

The Product Specification

Scotch Whisky has a well-established worldwide reputation and has been defined in UK legislation for many years, the current definition being in The Scotch Whisky Regulations 2009. The Product Specification for Scotch Whisky summarises the reputation, characteristics and production process and incorporates the main provisions of The Scotch Whisky Regulations. It was approved by the UK Government’s Department of Environment, Food and Rural Affairs (“DEFRA”). It has direct force of law and is published on DEFRA’s website at <https://www.gov.uk/government/publications/scotch-whisky-technical-file>.

The Verification Scheme

Her Majesty’s Revenue and Customs (“HMRC”) is the competent authority for verification of Scotch Whisky. HMRC already had access to extensive information about the industry because of its existing revenue controls and their appointment as the verification authority avoided unnecessary duplication. HMRC is also recognised in international markets as the body which issues Certificates of Age and Origin for Scotch Whisky, a role which continues.

HMRC has issued a Public Notice on the verification scheme for the Scotch Whisky GI which can be found on its website at: <https://www.gov.uk/guidance/producing-scotch-whisky>

HOW DOES VERIFICATION WORK IN PRACTICE?

Any site involved in any stage of the production of a Scotch Whisky brand, from mashing and fermentation through to bottling, or anyone outside Scotland who imports bulk Scotch Whisky must be verified by HMRC.

The verification scheme applies slightly differently to each of them:

Within Scotland - Relevant sites will include distilleries (mashing, fermentation and distillation), any site where Scotch Whisky is matured, any site where the contents of casks are emptied and blended, any site where Scotch Whisky is bottled and labelled or any site where previously bottled Scotch Whisky is re-bottled/re-labelled. Operators must make an on-line application to HMRC to have the processes at each site verified for compliance with the Product Specification. As part of the verification process, HMRC officers will inspect each site every two years to ensure compliance. Bottlers and labellers must register all brands of Scotch Whisky that they place on the market with HMRC.

Outside Scotland – Scotch Whisky may not be distilled or matured outside Scotland, but it is sometimes moved out of Scotland for bottling elsewhere (with the exception of Single Malt Scotch Whisky which must be bottled in Scotland). That process may also involve blending together separate shipments of bulk Scotch Whisky and bottling the resultant blend. Operators of sites carrying out any of these operations outside Scotland, wherever they are situated i.e. in the rest of the UK or abroad, must apply online to HMRC for verification. They must provide HMRC with details of the Scotch Whisky brands they bottle and an undertaking covering each of the operations carried out (thus, if a site blends and bottles/labels, two undertakings will be required). The undertakings are set out here:

<http://www.hmrc.gov.uk/tools/spiritdrinksapplication/sdvundertaking.htm>

Overseas Bulk Importers – Scotch Whisky is also exported from Scotland to companies that do not produce Scotch Whisky brands but who either sell the bulk Scotch Whisky to other companies that do or use the bulk Scotch Whisky as an ingredient in another type of alcoholic beverage. These companies, known as overseas bulk importers, must also apply online to HMRC for verification and provide undertakings.

HMRC maintain an online look-up service here:

<https://customs.hmrc.gov.uk/sdvlookup/index>

On this site it is possible for anyone to conduct a search to establish whether a facility has been verified to produce Scotch Whisky and if so, which processes it has been authorised to carry out; whether a company has been verified to import bulk Scotch Whisky; or whether a brand has been registered by HMRC.

It is illegal for any company in Scotland to ship Scotch Whisky in bulk outside Scotland for use in any alcoholic beverage unless the receiver has been verified by HMRC. Therefore only those facilities or importers that appear on the look-up service may be supplied with bulk Scotch Whisky.

Unless a brand has been registered with HMRC it may not be placed on the market. If a brand of Scotch Whisky does not appear on the look-up service, there is a presumption that it is not genuine Scotch Whisky.

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