

**FOOD STANDARDS AGENCY**

**WINE STANDARDS ENFORCEMENT POLICY**

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## 1 EXECUTIVE SUMMARY

- 1.1 This document explains the enforcement policy by which the Food Standards Agency (FSA) seeks to verify food business operators' compliance with the legislation it enforces. The aim of the policy is to ensure that enforcement decisions are always consistent, fair, transparent and proportionate. The FSA Enforcement Officers are accountable to ensure that the health of consumers is being protected.
- 1.2 The policy sets out the role of the FSA and its Wine Standards Inspectors in enforcing regulations governing the production, labelling and documentation of all wines marketed in the UK. It also summarises the roles of other enforcement bodies with responsibility for wine controls. It explains the regulations and the powers available to ensure compliance with these.
- 1.3 Current wine regulations in the European Union aim to provide a framework for permitted wine-making practices and labelling, designed to protect consumers and provide clear information. This document seeks to explain enforcement in the context of this legal framework.
- 1.4 This policy will be of most interest to growers of grapes, producers of wine, wine importers and exporters, wine wholesalers and others involved in the wine industry (see Annex C).
- 1.5 Enforcement will be consistent with the Code for Crown Prosecutors in England and Wales<sup>1</sup>, with the Prosecution Code issued by the Crown Office and Procurator Fiscal Service in Scotland<sup>2</sup>, together with guidance issued by the Home Office<sup>3</sup>.
- 1.6 The policy is consistent with the FSA Regulatory Framework and incorporates the provisions of the central and local government Enforcement Concordat, which commits the Agency to good enforcement policies and procedures. The Agency has confirmed its commitment to the principles of good enforcement by becoming a signatory to the Cabinet Office's Enforcement Concordat in June 2001<sup>4</sup>. The Agency is fully committed to the Hampton approach to risk based enforcement<sup>5</sup>.

## 2 THE FOOD STANDARDS AGENCY

- 2.1 The Agency is an independent non-Ministerial Government department, operating at arm's length from Ministers and governed by a Board appointed to act in the public interest. We are accountable to Parliament through Health

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<sup>1</sup> Code for Crown Prosecutors. June 1994 ([www.cps.gov.uk](http://www.cps.gov.uk))

<sup>2</sup> Prosecution Code updated 2005 <http://www.crownoffice.gov.uk>

<sup>3</sup> The Cautioning of Offenders. Home Office. Circular 18/1994, 15<sup>th</sup> March 1994. ([www.homeoffice.gov.uk](http://www.homeoffice.gov.uk))

<sup>4</sup> [www.cabinetoffice.gov.uk/regulation/reform/enforcement\\_concordat/index.asp](http://www.cabinetoffice.gov.uk/regulation/reform/enforcement_concordat/index.asp)

<sup>5</sup> [www.cabinetoffice.gov.uk/regulation/reform/hampton/latest.asp](http://www.cabinetoffice.gov.uk/regulation/reform/hampton/latest.asp)

Ministers, and to the devolved administrations in Scotland, Wales and Northern Ireland for its activities within their areas.

- 2.2 The Board, consisting of a Chair, Deputy Chair and up to 12 other members, is subject to public scrutiny through its open meetings. The day-to-day operations of the Agency are managed by the Chief Executive. Its staff are civil servants, accountable through the Chief Executive to the Board.
- 2.3 The Agency operates through the Meat Hygiene Service (MHS) in York, its regional Wine Inspectors and with local authorities and port health authorities, to ensure the proportionate and effective enforcement of food law.
- 2.4 The core values of the Food Standards Agency (“the Agency”) are:
  - to put the consumer first.
  - to be open and accessible.
  - to be an independent voice.
- 2.5 These values underpin the delivery of our primary aim of protecting public health and the interests of consumers in relation to food.

### **3 GENERAL PRINCIPLES OF ENFORCEMENT**

- 3.1 The main purpose of enforcement is to ensure that food products placed on the market are safe for consumption and that labelling provides accurate and clear information. Through a process of inspection, audit and verification, the Agency seeks to provide assurance that the risk to public health is controlled by the Food Business Operator.
- 3.2 This policy is intended to provide guidance for officers, businesses, consumers and the public. It does not affect the discretion of the Agency to take legal proceedings where this is considered to be in the public interest. Where we consider that formal action is necessary each case will be considered on its own merits.
- 3.3 However, there are general principles that apply to the way each case must be approached. These are set out in this Policy and in the Government’s *Enforcement Concordat* and the Hampton principles for risk based enforcement.
- 3.4 The principles of good enforcement are:
  - Clear standards of service and performance.
  - Openness.
  - Helpfulness.
  - Effective and timely complaints procedures.
  - Proportionality.
  - Consistency.

- 3.5 The Agency is a public authority for the purposes of the Human Rights Act 1998. We will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

### **Standards**

- 3.6 Clear standards setting out the expected level of service and performance will be published. Prevention is better than cure and our role therefore involves actively working with businesses to advise on, and assist with compliance.

### **Targeting**

- 3.7 Inspection will be risked based. The Agency will target resources towards those activities that give rise to the most serious breaches and any enforcement action taken will be primarily against those who have greatest responsibility for any breaches (see Annex E).

### **Co-ordination**

- 3.8 The Agency will adopt the most effective and consistent approach to enforcement by co-ordinating action between other regulatory services.

### **Transparency**

- 3.9 In dealings with business a clear explanation will be given of what needs to be done to conform with regulations, why it is necessary and with timescales for rectifying problems. Legal contraventions will be confirmed in writing to the food business operator with the consequences for failing to remedy them set out clearly.
- 3.10 Advice will distinguish between requirements that are stated in law and advice that has no legal basis but business may wish to adopt.
- 3.11 Opportunity will be taken to discuss issues before formal action is taken, unless doing so would lead to an unacceptable delay in achieving compliance. Resolution of disagreement about contraventions and remedies will be sought, and rights of appeal, where formal enforcement action is taken, will be explained.

### **Openness**

- 3.12 Advice and awareness are central to achieving a high level of compliance. Oral and written information and advice will be provided free of charge, and advice is also provided via the Agency's website at <http://www.food.gov.uk/wine/>.
- 3.13 If we receive information for example from a complainant that may lead to enforcement action against a business or individual we will notify that business or individual as soon as is practicable of any intended enforcement action,

unless this could impede an investigation or pose a safety risk to those concerned or the general public.

- 3.14 Where formal action is taken, the reasons will be made clear as will appeal procedures. Requests for information will be treated in accordance with the requirements of the Freedom of Information Act. During the progression of enforcement investigations/actions, food business operators or individuals and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a Court when required and/or in accordance with the Data Protection Act 1998.
- 3.15 Any changes to this guidance will follow full consultation with all stakeholders, including representative bodies such as the Wine and Spirit Trade Association (WSTA) and the United Kingdom Vineyards Association (UKVA). Consultations will follow the Cabinet Office Code of Practice on Consultation.<sup>6</sup>

### **Proportionality**

- 3.16 Inspections will be proportionate to the risk to public health. Enforcement will, be preventative, aimed at raising awareness and understanding of how to comply with the law. However, where enforcement action is taken decisions will be fair, independent and objective and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source. Enforcement action will be proportionate to the circumstances of each case.

### **Consistency**

- 3.17 The FSA will ensure that all Wine Standards authorised inspectors are properly trained and competent to ensure their duties are carried out in a fair, equitable, non discriminatory and consistent manner.
- 3.18 Service users can expect a courteous and efficient service and will always be given the name and contact details of the inspector with whom they are dealing. Wherever practicable enforcement services will be co-ordinated to prevent unnecessary overlap and delay.

### **Conflicts of Interest and Undue Influence**

- 3.19 Enforcement decisions are taken in an impartial way, mindful of potential conflicts of interest or undue influence being brought to bear on the decision making process.

### **Right of Appeal**

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<sup>6</sup> <http://www.cabinetoffice.gov.uk/regulation/consultation/code/index.asp>

3.20 Information will be provided when taking formal enforcement action concerning rights of appeal against a decision. This will involve a review by an independent assessor nominated by the FSA. The independent assessor nominated shall give the appellant and the Agency an opportunity to make representations on the matter; and the independent assessor shall, within one month of being nominated, decide whether the formal enforcement action should stand and shall notify you and the Agency of his decision

### **Complaints Procedure**

3.21 The Agency operates a Complaints Procedure, to be used except where there are separate legal appeal procedures. If you have a complaint relating to the way in which the Agency carries out its enforcement responsibilities, you should initially deal with the responsible Inspector who will attempt to resolve the dispute quickly, explaining what has been done and why.

3.22 If you remain dissatisfied and wish to take the complaint further, you should write to the FSA Complaints Co-ordinator who will acknowledge your letter within two working days of receipt. You will receive a full reply within twenty working days. If this is not possible the reasons will be given, together with an indication of when a full reply will be forthcoming.

3.23 The Agency's full complaints procedure is available online at <http://www.food.gov.uk/aboutus/servicestandards/fsacomplaintsprocedure>.

## **4 THE ROLES OF ENFORCEMENT BODIES IN WINE CONTROL**

4.1 The Agency is one of the UK enforcement agencies for European Community wine legislation, with enforcement carried out by the Agency's Wine Standards Inspectors. Growers of grapes, producers of wine, importers or exporters of wine or other wine-sector products, or wine wholesalers should register with the Agency. Such operators should expect periodic visits from one of our inspectors.

4.2 The Wine Regulations nominate Local Authorities as being uniquely responsible for enforcement in the retail sector. (see Annex A). The Agency is concerned with enforcement in the wholesale sector, thereby covering the vast majority of importers and exporters. HM Revenue and Customs is another listed enforcement agency, but its activities are principally concerned with revenue collection.

4.3 The term *enforcement* is used to denote actions taken by inspectors employed by the Agency to secure compliance with legal requirements. These actions include: preventive work aimed at raising awareness and understanding of the legislation; informal warnings; and more formal actions such as serving movement controls and prosecutions.

## **5 HOW WE WILL DELIVER OUR ENFORCEMENT RESPONSIBILITIES**

### **Registration**

5.1 Vineyards, wineries and traders are defined as Food Businesses and are required to register as primary producers (see Annex C - Definitions) under article 6(2) of Regulation 852/2004). Registered vineyards and traders are periodically inspected to ensure wine sector products comply. Vineyard data is held on the Vineyard Register and the trader database identifies the different types of business (see Annex E).

### **Inspections**

5.2 Inspectors are authorised under the Wine Regulations to inspect premises where wine sector products are held, and visit frequency will be determined by the risk to public health as set out in the Risk Assessment Framework in annex E. Inspectors will carry a warrant card which authorises them on behalf of the Agency to inspect premises to verify compliance with the legislation and to search for evidence, including examination of records; and to seize or secure evidence to ascertain whether an offence has been carried out.

### **First Inspection**

5.3 The first visit will normally take place in the presence of a company official, or nominated representative. The Inspector will:

- identify himself and show authorisation if requested.
- describe the procedures followed during a visit and the advice that can be offered.
- describe the responsibilities of the FSA and the powers of an inspector.
- describe the EU and National legislation which affect the trader's responsibilities and business (see Annex A).
- obtain details of the business to allow an entry on the FSA database, as required under legislation.
- inspect the premises, stock arrangements, records and other documentation, as required under legislation (see Annex D).
- confirm that the trader has appropriate procedures in place, in order to secure compliance with legislation.

### **Visit Advice Document (VAD)**

- 5.4 A Visit Advice Document (VAD) will be completed by the inspector if a problem is found. This records the name of the company, the address and the date of inspection, the name of the person seen and any infringements or irregularities observed - and any remedial action required. A time limit may be set for actions to be completed. A copy is given to the responsible person and a copy retained by the inspector.
- 5.5 A VAD is usually sufficient for the purpose of recording corrective actions. However some circumstances may warrant a letter that sets out in detail any infringement and the required corrective action. When infringements are of a serious nature then a formal Warning Letter will be issued.

### **Traders**

- 5.6 The frequency of inspections is determined by the risk and the nature of the business. A risk assessment model, based on origin of wine, volume and number of wines sourced directly, is used (see Annex E). Inspections help verify the trader's current situation, to update information, to ensure conformity with regulations and to establish compliance with any corrective actions previously identified. Inspections include visits to warehouses where wines are stored, usually in duty suspension before release to the market.

### **Vineyards**

- 5.7 Vineyard procedures are broadly similar to those applying to traders. Inspectors ensure compliance with production rules and take account of additional special rules relating to the use of Accompanying Documents and Winery Records. They check that the requirements for 'Notifications' and 'Declarations' are properly understood. In this context, attention is paid to the rules for Notifications of Enrichment and De-Acidification, and also to the Declarations of Harvest and Production.
- 5.8 Other guidance notes are provided to all newly registered traders, including guidance on the complaint/appeals procedure.

### **Sampling**

- 5.9 In cases where there are doubts about the authenticity and composition of a wine, and this cannot be established by inspection of the appropriate documentation, it may be necessary to take samples for organoleptic examination and/or chemical analysis. Specific EC rules exist for acquiring, marking and despatching samples of wine products, on occasions where these samples are required for analytical or organoleptic examination in another Member State. Such tests may be carried out in the United Kingdom but, if serious doubts remain in respect of wine produced in an EC Member State, samples may then be forwarded to the competent authority in the country of origin or an expert analyst in another country.

- 5.10 Until these questions have been resolved and the producer country has expressed an opinion on authenticity, further action in the UK is likely to be confined to gathering information for traceability purposes, using accompanying documents, invoices, records and, where necessary, lot numbers. However, if the producer country does substantiate the Agency concerns, this will normally constitute adequate grounds for the issue of a Movement Control Notice and the recall of distributed stock, and may require further investigation.
- 5.11 Wines from Third Countries will also be subject to sampling if there are grounds for suspicion, and whenever requested to do so by the Commission or another Member State or other enforcement body.

## 6 ENFORCEMENT DECISIONS

- 6.1 The decision about any formal action is determined by legislation. Where there is discretion the following criteria will be used to assess what action should be taken, in order to ensure that the choice of enforcement option is always consistent, balanced, fair and relate to common standards that ensure the public is adequately protected:

**The seriousness of the contravention or breach.** To determine this we will take into account:

- detriment to consumers
- risk to public health
- extent of the breach (and disregard for Community provisions)
- apparent degree of negligence, or wilful intent
- accumulation, or repetition, of less serious offences

**The likelihood of achieving compliance.** This will take into account:

- history of compliance
- ability to comply, for example by way of involvement only in secondary distribution of the product.
- willingness to comply with the current breach.

- 6.2 The flow chart (see Annex B) incorporates these criteria and illustrates the decision process. In practice each case will not be clear cut and will require a subjective assessment of the degree of seriousness and likelihood of compliance.

- 6.3 Exceptions to taking formal action using these criteria are:

- Where formal enforcement would be so unusually difficult that informal action would be more effective.
- Where the law states that for a given situation a particular enforcement action must be taken
- Where the offence is of such a transient nature that it would be unlikely that the inspector could check to see whether a warning had

been effective.

6.4 All enforcement decisions will be documented along with the justification for making the decision.

## **Enforcement Options**

Annex B describes the enforcement option decision making process.

## **Circumstances Warranting Prosecution**

6.5 Whilst there is some leeway in judging the weighting applied to each of the decision criteria, depending upon circumstances, a prosecution would normally be expected in the following circumstances:

- Persistently disregarding warnings that involve a potentially serious breach
- Failure to comply with a statutory notice (say a Movement Control, once eventually revised).
- Endangering public health
- Deliberate or wilful failure to comply with a legal duty
- Purposeful obstruction of an inspector from carrying out his duties

## **Determining whether a Prosecution or Caution is viable and appropriate**

6.6 We apply two 'tests' to determine whether a Prosecution or Caution is viable and appropriate. We follow guidance set by the Crown Prosecution Service when applying the tests. For more information about the 'Code for Crown Prosecutors' visit: [http://www.cps.gov.uk/victims\\_witnesses/code.html](http://www.cps.gov.uk/victims_witnesses/code.html)

6.7 A Caution or Prosecution proceedings will only be progressed when the case has passed both the evidential test and the public interest test. The principles outlined apply equally to the other types of formal enforcement action that are available.

## **The Evidential Test**

6.8 We must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test that means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or Magistrates' Court should only convict if it is sure of a defendant's guilt.

## **The Public Interest Test**

6.9 The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. We will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be more appropriate in the circumstances.

### **Who decides what enforcement action is taken**

6.10 Decisions about the most appropriate enforcement action to be taken are based upon professional judgment, legal guidelines, statutory codes of practice and priorities set by the Agency.

6.11 Where appropriate, decisions about enforcement will involve consultation between or approval from:

- Investigating Officer(s)
- Senior managers from the Agency
- Agency Solicitors

6.12 The Agency undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate, be taken into account when making enforcement decision

## **7 DEALING WITH OFFENCES**

7.1 Under normal conditions, the Agency enforcement responsibility for wine starts at the moment of transition into 'free circulation' (i.e. Customs Duty on non-EU wines has been paid) within the UK. After transition into 'free circulation' the full requirements of the regulations become relevant and normal enforcement procedures apply.

7.2 The legislation provides certain legal powers that may be enforced by an authorised officer. EU legislation – Regulation 555/2008 - sets down, in general terms, the provisions that may be applied. National legislation – CAP (Wine) Regulations - provides the statutory powers for an authorised officer.

### **Formal Movement Control**

- 7.3 An Inspector has a statutory right to control the movement of a wine product if he has reason to believe an offence has been, is being or is likely to be committed by contravention of or failure to comply with legislation. Movement control of wine products can have serious commercial implications and the use of any authorised powers is strictly controlled.
- 7.4 Before issuing a Formal Movement Control the Inspector must be satisfied with regard to at least one of the following questions:
- Is there reason to believe that an offence has been, is being or likely to be committed?
  - Is there, or is there likely to be, a risk to public health?
  - Is there, or is there likely to be, any fraudulent treatment of the product?
- 7.5 The inspector must inform the responsible persons of the action taken and the reasons for doing so. They must also be informed of the complaints procedure. Whenever the recipient of the instruction is not the primary owner or trader i.e. the responsible importer/shipper, the food business operator will be informed.
- 7.6 When the control is made at a warehouse, the inspector must inform the warehouse manager of the action taken and ensure that the product is not released until authorised by the Agency.
- 7.7 The inspector is required to notify the responsible person, or company official, in writing, giving the reason for the control order, and complete a Movement Control Form containing the following information:
- the product subject of control.
  - the Community legislation provisions the product is alleged to contravene.
  - advice on the remedial action, where appropriate.
- 7.8 The form states that the product may not be moved, without written consent of the Agency.
- 7.9 Following the service of a prohibition notice, Consent to Movement may be granted. The authorisation is given in writing and no movement of a prohibited product is allowed without prior authorisation. When a request for consent of movement is refused, the inspector must provide written notice of the circumstances of the refusal, and provide guidance on appeal procedures.
- 7.10 Where a Formal Movement Control order is removed, the withdrawal is notified to the appropriate parties by issuing a notice (WSB 18) giving the reasons for removal of the order.

## **Temporary Movement Control**

7.11 Alternative measures based on objective criteria and risk matrix, other than a Formal Movement Control, may also be considered by the inspector. The procedure will normally be adopted for less serious infringements. Generally the control will be used in response to a mandatory label infringement. The control may relate to a technical infringement, such as excessive discrepancy between the alcoholic strength shown on the label and an independent analysis, or a Third Country product exceeding the permitted total alcohol strength. The procedure may be followed where further investigation is necessary to verify the integrity of the product. Minor labelling infringements do not usually necessitate use of a Temporary Movement Control.

### **Warning Letter**

7.12 The Warning Letter is an official warning to a Trader/Vineyard Holder or Winemaker that a serious contravention of legislation has been committed. It is the final notice prior to proceedings being initiated. The letter clearly states the nature of the alleged offence, the relevant regulation and section contravened. The contents indicate that 'further contravention may result in the consideration of proceedings'.

7.13 The system of 'Warning Letters' has been adopted in order to deal with blatant or repetitive contravention of regulations. The letter is a formal warning in standard format (WSB 8) and represents an escalation in proceedings beyond routine verbal or written instructions.

### **Formal Investigations and Prosecutions**

7.14 The need for enforcement only arises when the law is being breached, or suspected, or likely to be breached. The Agency will determine this through investigation following receipt of allegations or other intelligence or through planned monitoring.

7.15 Inspectors are legally empowered to ask questions and collect evidence in relation to the offence they are investigating. Where inspectors wish to carry out covert surveillance or use informants during an investigation they will need to ensure that the requirements of the Regulation of Investigatory Powers Act 2000 (RIPA) are satisfied and that the Agency's policy statement on implementation of that Act is complied with. RIPA provides the lawful authority that is needed to justify interference with a person's right to respect for private and family life under Article 8.1 of the European Convention on Human Rights. The use of covert surveillance and informants must be authorised as described in the Agency's guidance documents on covert surveillance and covert human intelligence sources (the name given to informants in RIPA). In practice, authorisations will be granted by the Deputy Director of Legal Services. All applications for authorisations should be submitted to the Agency's Investigation Manager in accordance with the guidance documents described above. An authorisation can only be granted where the authorising officer believes it is necessary

- 7.16 Where contraventions of legislation are identified, the inspector will, where appropriate, provide the person responsible with an opportunity to discuss the issues before deciding the most appropriate course of action. A written explanation of the contraventions will always be provided and details of the proposed enforcement action.
- 7.17 Details of successful prosecutions will be published, to increase awareness of the consequences of failing to comply with legal requirements and to signal that the Agency is prepared to utilise its enforcement powers.

## **8 THE KEEPING AND DISCLOSURE OF INFORMATION**

- 8.1 Those holding wine sector products are required to keep records and documents relating to (wine making) operations for 5 years. Authorities are required to keep copies of VI2 documents for at least 5 years. Vineyard register data is to be kept for at least 5 years.
- 8.2 The identity of a person providing the Agency with information about suspected criminal activity will remain confidential, unless prior agreement by the person is obtained, a court of law requires it, or another enforcement agency requires it for the prevention or detection of crime (see below).
- 8.3 Personal data held manually or as computer records will be handled in accordance with the Data Protection Act 1998 (DPA). This information will be used in accordance with the FSA's DPA registration. Exemptions to this include where information is disclosed to other agencies or used for another reason for the purposes of detecting or preventing crime. This will include sharing of information with the police and other enforcement agencies.
- 8.4 Requests for information held by the FSA will be handled in accordance with the FSA's obligations under the Freedom of Information Act 2000 and Environmental Information Regulations 2004. Access to information legislation is informed by, but not limited to, the DPA. The legislation includes exemptions including information relating to an investigation of a criminal offence or information that would prejudice the prevention or detection of crime, etc.'

### **Protection of Human Rights**

- 8.5 This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998<sup>7</sup>. In particular, due regard is had to the following:
- Right to a fair trial

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<sup>7</sup> <http://www.opsi.gov.uk/ACTS/acts1998/19980042.htm>

- Right to respect for private and family life, home and correspondence

## **9 REFERENCE SOURCES**

**Code of practice B to the Police and Criminal Evidence Act 1984 (s.60 (1) (a) and s.66)** (<http://www.homeoffice.gov.uk/pcrq>)

**Cautioning of Adult Offenders. Home Office. Circular 30/2005, 14<sup>th</sup> June 2005.** ([www.homeoffice.gov.uk](http://www.homeoffice.gov.uk))

**The Human Rights Act 1998**  
<http://www.opsi.gov.uk/ACTS/acts1998/19980042.htm>

**Data Protection Act 1998 and the Freedom of Information Act 2000**  
(Department of Constitutional Affairs, [www.dca.gov.uk](http://www.dca.gov.uk)).

**Regulation of Investigatory Powers Act 2000** and code of practice on the Act ([www.homeoffice.gov.uk/rips](http://www.homeoffice.gov.uk/rips))

**Code for Crown Prosecutors. 5<sup>th</sup> edition issued 2004** ([www.cps.gov.uk](http://www.cps.gov.uk))

## **10 POLICY IMPLEMENTATION & REVIEW**

10.1 The implementation and operation of this policy will be monitored and corrective action taken where necessary. Departures from the policy will be exceptional and where they do occur, the reasons for the departure will be recorded. The policy will also be periodically reviewed and the views those people whom may be affected by it, will be sought.

## **11 FURTHER COPIES, CONTACT DETAILS & INFORMATION**

11.1 This policy and further information can be obtained from:

- [www.food.gov.uk/](http://www.food.gov.uk/)

**ANNEX A: RELEVANT LEGISLATION**

- A.1 Council and Commission Wine Regulations cover the whole market in wine from the grape to the final sale to the consumer. In addition, the Commission promulgates Directives and Notices on general matters, which are relevant to the Wine Regime, including where appropriate lists of the responsible (competent) authorities designated by Member States for enforcement purposes.
- A.2 While EC Regulations automatically become law in the UK, the practical application of this law in terms of interpretation, enforcement responsibilities, powers of enforcement officers, offences and penalties etc., is introduced by Statutory Instruments (S.I.) for England and the devolved regions. In England Defra, HMRC and the FSA are specifically nominated to cover the importation and exportation of wine sector products, and Defra and the FSA are responsible for any other matter not otherwise covered. The National Assembly for Wales and the Scottish Ministers have the equivalent function to the Secretary of State for DEFRA. "The Wine Regulations" are reissued from time to time, and kept up to date by regular amending SIs issued as required to cover new or amended legislation.
- A.3 Defra is the liaison body responsible for ensuring that designated control authorities have the necessary powers to check compliance with wine sector regulations, and acts as liaison body with its counterparts in other Member States and with the Commission. The Agency is one of the designated authorities authorised to ensure compliance with wine sector regulations.
- A.4 The Wine Regulations perform the following functions:
- a. They set out the Community Regulations under which prosecutions may be pursued and controls on movement of wine products imposed, and for which the various competent authorities have responsibilities for enforcement and execution.
  - b. They specify the penalties which can be imposed on persons found guilty of offences.
  - c. They list the various enforcement authorities and the scope of their responsibilities.
  - d. They specify the powers of the "authorised officers".
  - e. They set out any UK national provisions (e.g. the Quality Wine rules, where these are specifically permitted by EC regulations).
- A.5 European Legislation

EU Official Controls Regulation 882/2004

EC wine regulations

- 1234/2007 umbrella Council regulation on the Single Market, which includes permitted winemaking practices, labelling, criteria for wines imported from Third Countries
- 607/2009 labelling rules and annual verification requirements for specified categories of wines.
- 555/2008 Requirements for V11 document (certificate of origin and analysis, issued in the Third Country of origin). Responsibilities of control authorities in Member States.
- 436/2009 Vineyard Register; harvest declarations; accompanying Documents and Records. Transport of grapes and wines, records of wine making processes. Documentation provisions overlap with fiscal documentation required by customs authorities for dutiable goods.
- 606/2009 wine making practices and processes
- 1601/91 Aromatised wines. Includes vermouth, sangria

A.6 Domestic Legislation

Wine Regulations

Weights and Measures Act 1985

Weights and Measures (Packaged Goods) Regulations 2006

Alcoholic Liquor Duties Act 1979

Food Labelling Regulations 1996 as amended

Trade Descriptions Act 1968

Trade Marks Rules 1994/2583

Food Safety Act 1990

Food (Lot Marking) Regulations 1996

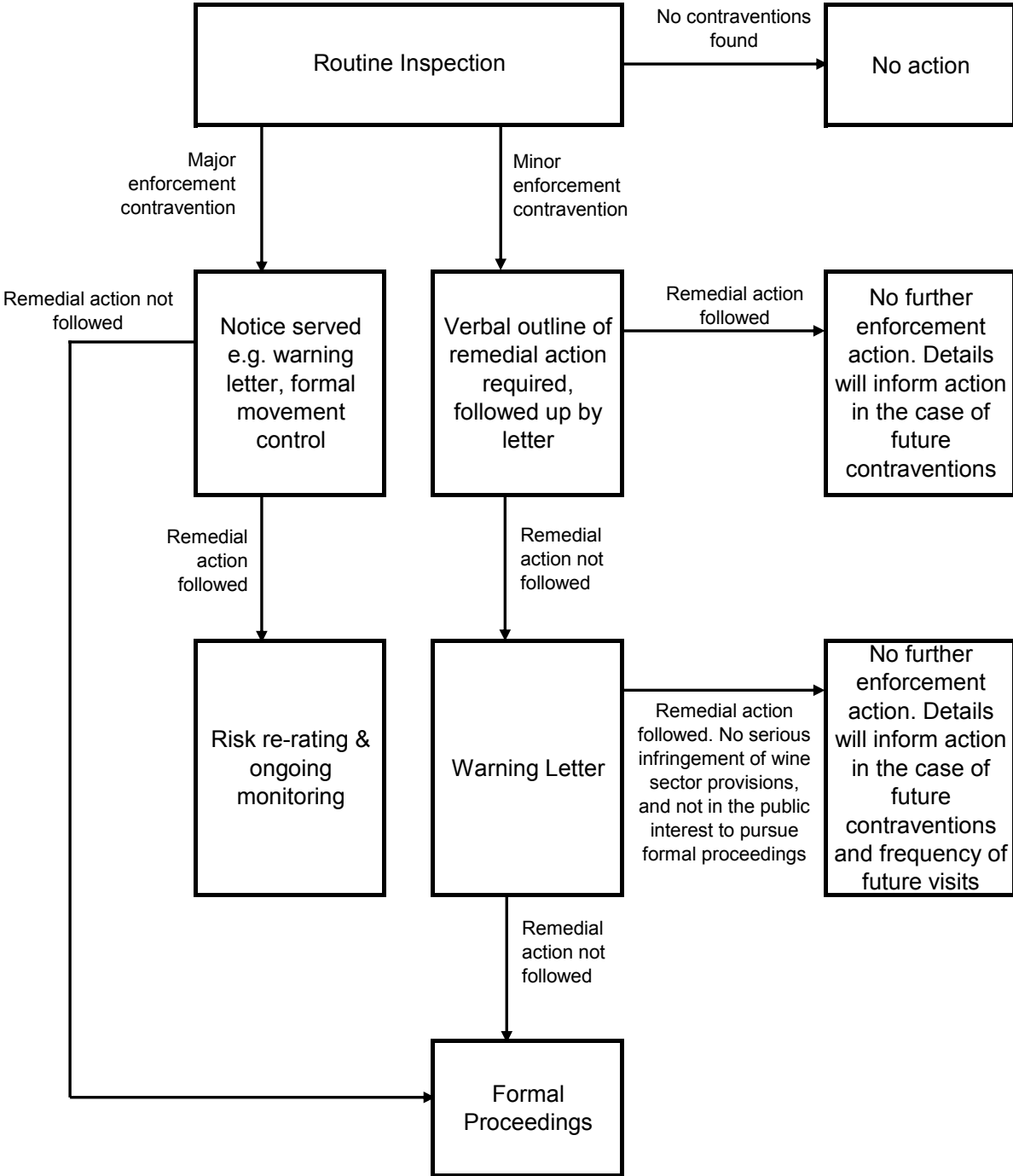
General Food Regulations 2004

Organic Products Regulations 2004

The Official Feed and Food Controls (England) Regulations 2006 and the equivalent in Scotland, Wales and Northern Ireland are the main legislation for the control of food not of animal origin entering the UK from non-EU countries.

The Food Standards Act 1999

ANNEX B: RISK BASED DECISION TREE FOR WINE ENFORCEMENT ACTIVITY



### ANNEX C: DEFINITIONS

By its very nature an enforcement policy must contain some terms that are accepted by the enforcement and legal professions. Some of these are explained here.

#### **Wine terms**

*British Wine* is obtained from concentrated grape must and is not a wine sector product.

The various types of wine and wine products are defined in Annex XIb to Regulation (EC) 1234/2007. As natural wine is obtained only from the fermentation of fresh grapes or grape must, the Regulations applicable to wine do not apply to products made in the UK from concentrated grape juice brought in from other Member States or imported from Third Countries (e.g. British Wine); wines based on other fruits (e.g. Apple Wine); or to wine which has been mixed with fruit juice, herbs or other substances (e.g. vermouths, other aromatized wines or medicated wines etc). The use of the description "wine" is limited to natural wines, with exceptions for certain products which include wine and which may legitimately use composite names. The Agency is responsible for the products defined in Regulation (EC) 1234/2007 and for preventing the misuse of protected expressions relating to these products.

*Bonded Warehouse* is where goods stored under duty suspension, under supervision of HM Revenue and Customs

*Importer, importation* refers to any shipment into the United Kingdom, unless otherwise stated.

*Exporter* is not defined in the Wine Regulations, but broadly refers to the shipment of wine outside the customs territory of the Community.

*Wholesaler* is a business selling wine to another business (other than the final consumer of the wine).

#### **Food Business Operator**

The natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control.

#### **Contravention/breach**

To breach or contravene the law means to 'break the law' in the opinion of the FSA. The FSA has the option to prosecute the person responsible for each contravention or warn the person that they must comply with the law within a certain time period.

#### **Covert surveillance**

Where an inspector observes a person without them being aware that they are being watched. This is occasionally necessary to obtain evidence of a contravention but the

activity is strictly controlled.

### **Formal caution**

A formal caution (as per Home Office guidance) is a written admission of guilt by an offender. It can be used for minor offences as an alternative to prosecution and avoids costly court appearances. Once issued the formal caution is held on a public register and may be used in future prosecutions if the person re-offends.

### **Informants**

An informant is a person who is not employed by the FSA but who assists the FSA by collecting information about a person or their activities which they otherwise would be unable to obtain. This is only done to provide evidence of a contravention and is strictly controlled.

### **Legal requirement**

A requirement stated in law. Laws are made as Acts of Parliament or as UK or EC Regulations. Each law relates to a particular subject, for example the Wine Regulations 2009 contains requirements in relation to wine sector products marketed in England. Each law can require or prohibit certain activities.

### **Legislation**

See 'Legal Requirement'

### **Remedy**

A remedy is the action that is necessary to comply with a law that is currently being broken. The remedy may be to stop doing something or to undertake some work. The FSA can give guidance on what remedies are likely to be effective, however it cannot guarantee that a particular remedy will achieve compliance with the law. For this reason it is sometimes necessary to try a number of remedies to eventually succeed in complying with the law.

### **Seizure**

Seizure is a form of direct intervention whereby the FSA is empowered to remove property or goods.

### **Statutory notice**

The term 'statutory notice' is used in this document to refer to official notices that warn the person responsible to comply with the law within a certain period of time otherwise direct intervention or prosecution will be undertaken by the FSA. In effect it is a 'formal warning'. Failure to comply with a statutory notice is often an offence in itself and so an offender can be prosecuted for the original offence and for non-

compliance with a statutory notice. If someone served with a statutory notice believes they are not responsible or that the notice is unreasonable in some way, they can appeal and details of the appeal procedure is attached to the notice when it is served.

**Warrant to Enter**

A warrant is a Court order giving the FSA the power to force entry to a property and with the support of the police if necessary.

## **ANNEX D: FORMS AND DOCUMENTS**

### **Accompanying Documents**

- D.1 Powers of movement control and execution of warrants apply to all wholesale traders and vineyard holders, irrespective of whether or not the business is registered with the Agency.
- D.2 EU legislation requires a system of documentation to ensure an audit on the movement of wine can be established. The general requirement is for the use of documentation to accompany the movement of excisable goods, under duty suspension or already released for consumption. The documents provide a certificate and authenticate a wine sector product. The accompanying document for a product produced in an EU Member State differs from that used for a Third Country product.
- D.3 Checking the correct movement documentation and compliance with legal requirements is an important feature of the inspection process. Preferably this is done at a tax warehouse, or, if the wine is a direct import, Duty Paid, at the Wholesaler's warehouse. The latter will apply for wine products shipped from another Member State, and can include a Third Country product imported to the other Member State.

### **Movement of wine between Member States**

- D.4 The accompanying documentation control is provided under Regulations 436/2009, 118/2008 and 3649/94. The principal document is an Accompanying Administrative Document (AAD) which was initially devised for fiscal purposes. This document is issued in the Member State of origin for the movement to another Member State for excisable goods that are held under duty-suspension arrangements.
- D.5 Where the movement of wine in the UK occurs in a bulk consignment of over 60 litres the movement is accompanied by a Commercial Accompanying Document (CAD). This form may also be used for the export of wine to a Third Country. It is used in the UK by a Vineyard Holder for the recording of grape sales to another Vineyard – issued by the Agency, form WSB 15.

### **Third Country Movement – Importation to the EU**

- D.6 The importation of wine from a Third Country is subject to Regulation 555/2008. This regulation provides for a standardized document issued by or with approval of named authorities in the Third Country of origin, to certify the origin of the wine and provides an analysis of the technical specification of the product. The information is recorded on a VI1. A further document, known as a VI2, can be issued where the consignment, whilst held in duty-suspension, is divided to enable part of the consignment to be transferred to another tax warehouse in the UK or elsewhere in the community, or is reconsigned complete.

**VI Documents**

- D.7 , VI forms are required to accompany all wine products (whether bulk or in bottle) imported into the Community from Third Countries (except for consignments of less than 100 litres) until Customs duty has been paid and the goods are in free circulation.
- D.8 VI forms serve not only to authenticate the products to which they relate but also to confirm that only permitted oenological practices have been used. It follows therefore that the labelling of the wine in question should be identical to the VI document in terms of both description and characteristics (e.g. nominal volume, alcoholic strength etc).
- D.9 HMRC is responsible for providing VI2 forms for use with any onward movement of a split consignment prior to payment of Customs duty.
- D.10 Inspectors confirm the content of VI documents, and compare with the labelling details. Direct importers are responsible not only for ensuring that VI documents are received, either by themselves or the Tax/Bonded Warehouse to which the goods are consigned, but also that the wine is checked against the information contained in these documents. If wine has been moved on from its initial place of consignment, inspectors need to be satisfied that the consignment is traceable to the importer and hence to the original VI.

**Traders and bottling Records**

- D.11 Trader records are a vital component of the overall system of control. The primary document will be the AAD or the VI1. Equally important, for the purpose of EU legislation, is a commercial invoice or other official documents used in the UK for the movement of wine.
- D.12 The audit trail is significant to the chain of operation employed by a wholesaler. This information can be important when it is necessary to recall a product. Bottling operations are of particular importance
- D.13 Re-labelling of the wine requires strict control. This is particularly important whenever the original mandatory information is removed for the purpose of substituting a 'designer' style label – as required by the On-Trade customer.

**English and Welsh Winery Records**

- D.14 Proper record keeping at the winery is an important component of the UK Quality Wine Scheme. For Quality Assurance and Control purposes the winemaker is expected to maintain records of the vinification processes. EU legislation requires that certain information is made available to the competent authority. This information can only be ascertained from the records maintained by the person responsible for the operations, making it essential that the winemaker maintains adequate records at all stages.

## ANNEX D

- D.15 For the purpose of the UK Quality Wine Scheme records must be completed to the satisfaction of the inspector. Many wineries maintain computer-based records. The inspector needs to be familiar with the system, and be satisfied that valid information is available in hardcopy format.
- D.16 A Quality Wine psr record must clearly indicate that the vinification processes have been completed separately to wine in another category e.g. Wine. Vinification processes must comply with EU legislation and the UK Quality Wine Scheme, as described in the Notice to Vine Growers and Wine Producers. This records all stages of the process, from receipt of grapes, through vinification, to racking and bottling. The volume of the wine at each stage of the process is entered on this document. A correctly completed WSB 20 that demonstrates compliance with permitted vinification processes will satisfy this aspect of the Quality Wine Scheme.
- D.17 Similar records are required for the granting of Regional Wine status, although currently this not an EU requirement and therefore is not the responsibility of the Agency.
- D.18 As with all wine production an audit trail, from grapes received through winemaking, coupage, bottling, labelling and distribution, must be available for inspection.
- D.19 The winery record - WSB 20 can be completed for a Wine or a Regional Wine with a Geographical Indication (Regional Wine) or for any other wine product.
- D.20 The winemaker is required to notify the inspector of any enrichment 48 hours prior to the commencement using form WSB 10. Similarly de-acidification must be notified not later than the second day following first operation of the wine year (using form WSB14).
- D.21 The Agency is required to gather annual production statistics. The Vineyard Holder is required to submit a Harvest Declaration (WSB 12), and the Winemaker a Production Declaration (WSB 21 and/or 21b). All records are completed as permanent documents and retained for 5 years.

## ANNEX E: RISK ASSESSMENT FRAMEWORK

### Traders

CODE	VISIT FREQUENCY	APPLICABLE TO
3+	At least three times a year	Major Tax/Bonded Warehouses (i.e. those which contract bond)
2	Twice a year	Major Bottlers Major Importers (where stock is held) Other Tax/Bonded Warehouses Duty Paid Warehouses Minor Bottlers
1	Once a year	Major Labellers/re-labellers Other Importers (except those with minimal stock and documents) Major Wholesalers Minor Labellers/re-labellers
0.5	Every two years	Minor Importers Minor Wholesalers
0.0	Every four years	Occasional Importers (proforma every two years) Occasional Wholesalers (proforma every two years)

### Tax Warehouse

Wine received and housed in bond under duty suspension from other Member States or Third Countries for traders, prior to duty payment for home use. Visits to bonded warehouses complement other inspection activities involving individual wholesalers.

### Bottling and Re-labelling Operations

The receipt of bulk imported consignments for processing is a high risk operation, and is usually undertaken on a contractual basis for a variety of wholesalers.

### Trader/Warehouse

Traders occasionally import duty paid consignments, thus bypassing tax warehouses. This is particularly common for imports from other Member States, and calls for a higher frequency of inspection. Similarly major traders demand a higher inspection frequency, primarily due to the large volume of trade.

## Vineyards

<b>CODE</b>	<b>VISIT FREQUENCY</b>	<b>APPLICABLE TO</b>
2	At least twice a year	Contract Winemakers Winemakers with holdings of 10 hectares or more
1	At least once a year	Winemakers with holdings of less than 10 hectares
0.5	Every two years	Vineyards selling grapes
0.0	Every four years	Hobby and abandoned vineyards (proforma every two years)