

# Chapter 11 Wine Standards Procedures

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# 1. Visit guidelines

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## 1.1 Introduction

### 1.1.1 Visit types

Visits can be divided into four main types:

1. initial registration or deregistration
2. routine new products, including products from new or rarely seen areas
3. investigation or complaint
4. additional (for example, winery record checks or sampling visits, consultation visits)

### 1.1.2 Visit purpose

The key purposes for making visits are for Inspectors to:

- check that the FBO is acting honestly and that adequate systems are in place to verify the quality authenticity and correct labelling of wine products
- identify any new wine traders in the supply chain or any new unregistered vineyards

- gather intelligence about any new products or suspect products in circulation
- offer advice to the FBO on changes to legal requirements or best practice

Further guidance is given later in this chapter in respect of visits to specific types of premises.

### 1.1.3 Visit format

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Further guidance is given later in this chapter in respect of visits to specific types of premises.

## 1.2 Considerations

### 1.2.1 Announced or unannounced visits

One of the key considerations in deciding whether to visit by appointment or unannounced is whether the FBO is regarded as an honest and legitimate trader.

If it is likely that suspicious activities or suspect products may be found and prior warning will provide the FBO with an opportunity to hide such activity or remove such products, then unannounced visits may be more appropriate.

### 1.2.2 Announced visits

In many cases it is preferable to make routine visits by prior agreement. For example, many traders and vineyard holders work from their own homes where immediate powers of entry are not available.

In addition, with the extensive travelling involved, it makes both environmental and common sense to ensure that the person who needs to be seen is available.

**Prior warning of a visit should not be given if it is seriously suspected that it would defeat the purposes of the visit.**

### 1.2.3 Unannounced visits

Unannounced visits are likely to be made to new traders or new vineyard sites where it has not been possible or it is impracticable to make contact with the FBO beforehand.

Unannounced visits should also be considered where a visit is being made following intelligence that suggests the trader might be a supplier of a suspect wine.

It is reasonable to make unannounced routine visits to businesses operating from larger commercial premises especially bonded facilities, bottling plants, cash and carries and larger vineyards unless an Inspector needs to see a specific individual who may not be present without giving prior notice.

Unannounced visits may also be considered appropriate when making other announced visits in a geographical area where perhaps time becomes available to carry out additional visits in the same area.

### 1.2.4 Pre-visit planning

Prior to any inspection, the Inspector should check:

- previous visit history
- previous infringement reports
- advice history, especially in respect of any derogations that may have been given
- authorise not authorize

Remember: if in doubt, check! Use the 'FSA house style'.

### 1.2.5 Pre-visit risk assessment

Wine Inspectors will routinely visit a wide variety of premises in connection with their work. They will, therefore, be familiar with the likely risks to be encountered when visiting new traders.

The two main risks associated with carrying out inspections are:

- the nature of the premises to be visited
- the personnel involved in the business operation

The nature of the premises includes taking into account factors such as whether fork lift trucks are used.

Most new traders will be identified either:

- as a result of a visit to an established trader (for example by being advised directly, by checking orders and invoices or because an infringement has been detected)
- as a result of receiving a direct enquiry from a new trader

So long as the existing trader can provide adequate information about the new trader, and provided any infringement is not of a suspicious nature, it is likely that a visit can be arranged to the new trader in the normal way.

Similarly, visits following requests for advice from new traders are not likely to pose problems.

In most cases, on arrival Inspectors will be able to assess whether the new premises to be visited appear to be similar to other categories of premises they have visited and they will be able to apply the criteria from the generic risk assessment.

In addition to physical hazards, Inspectors will normally be able to assess the nature and attitude of the person running the business and rely on their training and interpersonal skills to reduce the risks of any confrontational incident.

### **1.2.6 Suspicious traders**

In view of the increasing number of incidents of alleged smuggled or counterfeit wine, it is possible that some new traders will be identified (via intelligence from other authorities and / or the FSA Food Fraud Team). It is advisable for additional precautions to be taken before visiting them.

The fact that some of these traders may have operated undetected for a number of years could in itself be regarded as suspicious. In addition, they may operate from remote or isolated premises and / or with unscrupulous staff.

Whilst it is possible that many of these “new” traders will turn out to be legitimate, from a wine standards’ point of view it is important that Inspectors consider the

possible risks to their own health and safety prior to visiting. In particular, if there are suspicions as to the legitimacy of the operation is likely that an initial visit will need to be made unannounced.

Usually, unless Inspectors have strong reasons for doing otherwise and are confident that their Health and Safety will not be at risk, they should only conduct such visits if accompanied.

### 1.2.7 Points to consider

What information about the trader is readily available?

- Does the FSA Food Crime Team already have information on the trader?
- Check by emailing the Food Crime Team
- What information appears on Companies' House website?

Investigations Branch can provide a Companies House report, on request

- Has the company been dissolved and re-established with a (slightly) different name on a number of occasions?
- Have the key staff changed repeatedly?
- Have they been associated with the dissolved companies?
- Are they up to date with accounts?
- What information is available from the Internet?
  - Do they have a functioning website with contact details and product information?
  - Do general searches reveal adverse information regarding the person running the business? Is there any suggestion of criminal activity or violent incidents?
- Carry out a postcode search and / or check the location of the premises
  - Is it practical to carry out an initial "drive by" visit?
  - Are the premises isolated and away from general view?
  - Do they form part of a normal wider industrial park?
  - Does the park look well run with plenty of other people coming and going?
  - Do the premises look like a drinks business?
  - Is the company trading name displayed?

- Are there any sign written vehicles outside?
  - Do company personnel have uniforms?
  - Can you get a mobile phone signal in case you later need to raise an alarm?
  - Is there somewhere safe to leave your vehicle where it will not be identified or potentially damaged?
- Are the LAs (Environmental Health and / or Trading Standards) aware of the trader concerned? Would they wish to be involved in a joint inspection?
  - Is it possible to find out if the person has a criminal record (particularly for incidents involving violence)?

### 1.2.8 Joint visits with other authorities

Do not assume that it is automatically safe to visit a new or existing trader at the request of another authority. It is important to check that the authority has conducted its own pre-visit risk assessment

Any joint visit at the request of HMRC officers will have been subjected to an HMRC risk assessment. Usually, this will involve them doing as much research as possible on the place and individuals involved.

If HMRC officers are planning a major operation they will normally request criminal records searches and try to establish if there are fire arms licences etc. They will also check their own systems to see if officers have had trouble in the past. On occasions, they will deploy body armour in criminal investigations where an arrest is likely. The Police will normally be made aware of such activity and will attend as required.

If the perceived threat is so severe that HMRC feel that body armour should be deployed then it is unlikely HMRC will ask us to attend until after the premises have been entered and it has been established that it is safe for us to enter.

Our own pre-visit risk assessment prior to agreeing to attend a joint visit should be to ask for email confirmation that:

- HMRC has conducted its own risk assessment
- that you will not be asked to enter until you have been notified that is safe for you to do so

Ideally, more than one Wine Inspector should attend to corroborate any evidence need for any subsequent action by the FSA and to assist in collecting samples.

On the day in question Wine Inspectors should introduce themselves to the responsible HMRC Lead Officer and confirm the above points verbally. Wine Inspectors should only enter the premises if satisfied that it is safe to do so and they should leave immediately if the situation changes and personal safety is compromised.

### 1.2.9 General precautions

- Take a balanced view based on all the information available and only visit if it is safe to do so
- Try to visit with a colleague
- If carrying out joint visits discuss the potential risks in advance with all other parties
- Advise Technical Inspector and HOD in advance of the intended visit
- If going by car, park in a safe location and ensure a safe exit is available
- Ensure you have your identity card and warrant readily available
- Ensure your mobile phone is fully charged in case you need it to call assistance
- Wear appropriate clothing – for example, safety shoes may be good idea even if they would not otherwise be worn to an office situation
- Advise Head Office after the visit has been completed.

## 1.3 During the visit

### 1.3.1 New businesses

In respect of new registrations, unannounced visits or formal investigations, Inspectors must:

- show their official identification
- explain the FSA remit and the general purpose of the visit
- explain the likely length of time the visit will last
- explain the immediate implications for the trader or vineyard owner
- enquire if there any specific health and safety concerns related to the site

### 1.3.2 Existing businesses

In general, routine visits or those requested by a trader or vineyard owner do not need the same degree of formal 'introduction' by the Inspector. However, Inspectors should have a structure for the visit and should use the pro-forma risk assessment and trader or vineyard questionnaires as the basis for the visit, even if they do not precisely follow each section.

### 1.3.3 Visit progress

It is not possible to examine every single bottle of wine and every single accompanying document. Inspectors must use their discretion and act on any current information / intelligence regarding current topics, infringements or suspect brands of wine.

### 1.3.4 Physical examination of stock

Checking of stock and accompanying documentation should be based on:

- stock for new traders
- current trader infringement history
- new products including products from new or rarely seen areas
- changes in legal requirements for labelling or documentation
- intelligence led concerns regarding potentially suspect wine
- products from third countries
- stock from previous corrections
- wines on voluntary or formal movement controls
- random checks

As the inspection progresses, Inspectors must draw the FBO's attention to any serious infringements that are discovered.

At the end of the visit, the Inspector should explain what action the FBO needs to take and this should be confirmed by use of the Visit Advice Document and / or by email.

For more serious infringements it may be appropriate to issue formal notices in addition to or instead of the Visit Advice Document.

Formal notices should be served in accordance with section 3 on 'Enforcement'.

### 1.3.5 Intended outcomes

At the end of any visit, the FBO should understand why they have been visited and the reasons for any action that they will need to take.

The Inspector should have identified:

- what activities are taking place
- the types of products being stored and / or traded
- what, if anything, has changed since the previous visit (if any)
- what key contacts exist
- what due diligence procedures are followed
- the adequacy of records
- whether previous infringements have been corrected
- what new infringements exist and which of those are serious
- what corrective action needs to be taken and whether any formal intervention is needed
- what further communication might be needed with other agencies, other Inspectors or other FSA teams

In respect of (7) and (8), Inspectors should collate details of infringements likely to result in enforcement action in a way that will enable them to be correctly recorded on the database and, if necessary, referred to other Inspectors for follow up action.

Inspectors shall take photographs and obtain copies of any relevant documentation to support written notes that they make. In the case of serious infringements, all photographs should be taken and recorded in accordance with the evidence gathering procedure (chapter 7 on 'Enforcement', section 2). All photographs should be logged with a description of the wine and which label is photographed.

### 1.3.6 Follow up actions

Following the visit, the Inspector will:

1. advise the FBO of any action they will need to take; for minor matters this may be verbally, supported by the use of a Visit Advice Document, and / or by email.

For more serious infringements it may be appropriate to issue formal notices in addition to or instead of the Visit Advice Document. Formal notices should be served in accordance with section 3 on 'Enforcement'.

2. write a visit report:
  - summarising who they met and their status
  - summarising what was discussed (see trader or vineyard discussion topics as a guide)
  - explaining any significant changes to operations
  - noting any future proposals the FBO may have
  - recording any infringements found
  - noting if the risk rating needs amendment
  - recording what further action needs to be taken by the Inspector and / or other agencies
3. review and, if necessary, amend the risk rating
4. notify other Inspectors of any infringements found that relate to their traders or vineyards or of any new traders or vineyards that will need visiting
5. update the database re contact details, infringements, changes of vineyard and parcels status
6. complete any 5x5x5 reports and advise other agencies and / or other FSA teams
7. schedule the next visit

### **1.3.7 Inspectors' discretion**

The above guidance and associated questionnaires should not prevent the Inspector using discretion and adopting a different style or approach should the nature of the visit change as it is being carried out; for example, if a registration visit or a routine visit reveals criminal activity or serious infringements or if the Inspector's safety becomes compromised.

### **1.3.8 Trader visits**

Visits should ideally take place in the presence of the FBO or another member of the management team or a designated contact. If this is not possible it is

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permissible for the Inspector to proceed, especially in respect of stock or record checks.

In many cases, the FBO may suggest that the Inspector inspects stock or records unaccompanied. This is acceptable provided the Inspector feels this is appropriate and that they will both be safe and receive any necessary co-operation from other staff at the premises. However, if problems are identified during the inspection, they must be drawn to the attention of the FBO (see section 3 on 'Enforcement').

Inspectors must:

- ascertain the range and scale of activities, such as volumes, shipping, importing and wholesaling, using annex 1 on 'Trader questionnaire'
- discuss relevant items from annex 2a on 'Trader discussion topics' leaflet
- inspect the premises, stock arrangements, records and other documentation
- ascertain if the trader is conversant with the responsibilities for quality assurance, quality control and Due Diligence
- ascertain the corrective action taken over any previous infringements that were identified
- if possible, ascertain the extent of the trader's product knowledge
- examine labels for compliance with EU requirements
- ascertain the product supply chain, (where the trader obtains their wine and who, in turn, they supply) in case other 'new' traders can be identified
- try to form a view as to the overall integrity of the trader and the likelihood for future compliance – does the trader seem open, honest and co-operative or vague / obstructive / unhelpful?
- finally, assess an overall risk rating for the trader using sub-section 1.7 on 'Inspection rating scheme'
- Inspectors must use discretion in gathering sensitive information regarding business activities and turnover, regarding such information as confidential.

Following completion of the visit, a Visit Advice Document (annex 12) should be completed if the trader needs to take action as a result of the inspection. In most cases this can refer to a follow up email or letter being sent (see section 3 on 'Enforcement').

### 1.3.9 Routine visits

A routine visit is determined by the allocated visit frequency for the purpose of:

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- verifying the trader's current situation
- to update information
- to ensure conformity with regulations
- to establish compliance with any corrective actions previously prescribed

In the main, this follows the same procedure as for a registration visit. Inspectors should cover the following:

- check the data contract information
- check for any significant changes in operation
- check that any outstanding actions or requirements have been resolved
- advise of any changes in Regulations using the 'Trader discussion topics' at annex 2a
- examine invoices and other accompanying documents
- check labelling of stock
- advise trader of any infringements, corrective actions and timescales required
- issue a Visit Advice Document for infringements detected
- advise if formal notices are to be issued in accordance with Section 3 – Enforcement
- check relevance of risk rating and advise trader of any likely change to visit frequency

On completion of the visit, the Inspector will record the details on the database. The report should:

- note changes to Register status (such as classification, trading name and / or address, visit frequency, contact information)
- record advice and / or instructions given to the trader requiring corrective action
- raise any issues or questions requiring Technical Inspector advice or decision
- inform other Inspectors, as appropriate, and maintain records of the trader's business position

A brief report is logged on the database. The identification of infringements concerning a trader (or notification of a new trader) not registered on the system requires copying the report to the relevant Inspector(s).

Inspectors may consider a Visit Advice Document is sufficient for the purpose of recording corrective actions. However, if the inspector feels more formal action is appropriate, they should indicate this to the FBO on the Visit Advice Document and then follow the enforcement procedure in section 3 on 'Enforcement'.

### 1.3.10 Additional visits

Additional visits may occur:

- at the discretion of the inspector concerned
- in response to information provided directly by other Inspectors or third parties such as Trading Standards
- in response to a request or an instruction from the Technical Inspector or HOD
- as part of a routine or specific sampling exercise
- as part of a monitoring programme of products subject to prohibition notices

The format for additional visits will be determined by the reason for the visit. For example, visits for investigations or sampling should be conducted in accordance with relevant procedures for those activities.

Visits are recorded and reported in the same way as for any other visit.

## 1.4 Additional requirements for specific categories of trader

### 1.4.1 Bottling Plants

1. On a first visit to a bottling plant Inspectors must do a 'walk through / talk through' inspection of the plant to ascertain the range and scale of activities and, in particular, covering all the points shown in **Tax / bonded warehouses** section.
2. Ascertain the extent of the trader's knowledge of EC wine legislation.
3. Ascertain the responsible person(s) for various activities such as intake analysis, documentation checks, label checks and derogation requests.
4. Ascertain the details of the wine traders using the bottling plant as a contract bottler and the range of wines and brands being bottled.
5. Check procedures for pre-intake checks including analysis.

6. Check products against shipping / importation documents.
7. Establish production run checks and due diligence procedures on systems and products.
8. Check procedures for change of product run to ensure no incorrect labelling of products, including misuse of historic labels.
9. Use a VI1 or EAD unique reference number to see if the operating system has a full audit trail and can readily and quickly follow through to the final label on a bottle.
10. Examine sample VI1 or EAD documents against intake analysis results.
11. Examine labels for compliance with EU Regulations – these can be inspected either from ‘production files’ or inspected in the trader’s ‘sample store / library’.
12. Inspect ‘production files / sample store’ for each customer and inspect label for infringements, including traceability of importer / bottler and, if codes used, details of the ‘Distributor’. Check the validity of ‘Importer / bottler codes’.
13. If the company requests an importer or bottler code, follow the guidance given in 1.4.2 on ‘Issuing importer and bottler codes’.
14. Ascertain what corrective actions have been taken over any previous infringements that were identified.
15. As all the bottling plants are bonded facilities, follow the check list shown at the **Tax / bonded warehouses** topic when inspecting that part of the business.
16. Try to form a view as to the overall integrity of the trader and the likelihood for future compliance.
17. On repeat visits, check to see if there are any changes to operational systems, database systems or installation of new plant equipment. Inspectors must again perform a ‘walk through / talk through’ of the system to ensure full traceability of wines.
18. Finally, assess an overall risk rating for the trader using sub-section 1.7 on ‘Inspection rating scheme’.

### 1.4.2 Issuing importer and bottler codes

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All requests for a code to be issued must be made in writing indicating the type of code required, official name of the company, its trading name and its head office address.

In principle, the number to be allocated will be the trader or vineyard WSB registration number as allocated by the Wine Standards database unless this conflicts with any previously allocated number.

### Procedure

On receipt of an application:

- ascertain the WSB registration number of the business from the Wine Standards database
- open the Importer / bottler code spread sheet on S drive / Wisdom (within the Traders and Vineyards folder) and look at “ALL CODES”
- check that the number has not previously been used under the original allocation system
- if not previously used, allocate the WSB registration number and update the spreadsheet
- update the bottler / importer field on the WSB database indicating for our purposes:
  - just W followed by the number for a bottler
  - WBI for a bottler and importer
  - WI for just an importer
- notify the applicant in writing that they may use the allocated code (omitting the sub-code) so it is just “W” followed by their allocated number
- if their WSB registration number has previously been used, contact the Technical Inspector to discuss – do not invent a number!
- place copies of the application and the approval in the relevant trader or vineyard file on S drive / Wisdom

**Note:** Ensure the Excel file is correctly saved and that you have updated the database before authorising the applicant to use the code.

### 1.4.3 Tax / bonded warehouses

HMRC rules apply and warehouse managers are required to conform precisely to these rules.

For an Inspector's initial visit, the format should be similar to a normal routine trader visit in respect of introductions and Inspector remit. However, in particular, the Inspector should establish:

- the key points of contact and responsibilities at the warehouse
- health and safety and / or access procedures
- documentation and recording systems including databases for stock control
- stock identification system, for example, rotation numbers and location codes (it is usually necessary to record the rotation number and location details before the documentation related to a particular product can be found)
- the number of wine traders holding stock and approximate turnover
- list of traders
- the nature of any due diligence checks carried out on behalf of clients
- other services provided, such as slip labelling
- HMRC contact
- any new traders and advise the relevant inspector of their contact details and any infringements found relating to that trader

### **1.4.4 Physical examination of stock**

Checking of stock and accompanying documentation should be based on:

- stock for new traders
- current trader infringement history
- new products, including products from new or rarely seen areas
- changes in legal requirements for labelling or documentation
- other intelligence led concerns regarding potentially suspect wine products from third countries
- stock from previous corrections
- wines on voluntary or formal movement controls
- random checks

### **1.4.5 Document checks**

Accompanying documentation must be checked to ensure it supports the authenticity of the product it relates to. The main documents are:

- EADS / EMCS
- VI1
- VI2
- simplified VI Certificates (Australia, USA and Chile)
- commercial documents, invoices, bill of loading and other documents

Inspectors should check that:

- the description of the product and the quantities are accurate
- the correct CN code has been used for the status of the EU product
- the analysis statement of the form VI1 or VI2 matches the label of the products and are within permitted EU parameters
- form VI1 can be obtained to support authenticity of third country products moved from another member state using an EAD

### **1.4.6 Cash and carry premises**

Cash and carry businesses are regarded as wholesale premises as usually only trade customers are permitted to purchase stock. They will also deliver to independently owned trade outlets. Inspections follow the format for normal routine trader visits unless a specific investigation or sampling exercise is being conducted.

Inspectors should check:

- for any direct imports or shipments that might alter the risk status
- the supply chain to and from other wholesalers
- the presence of unknown brands of cheap wine
- documentation; Inspectors should view with concern the absence of documentation particularly with unreasonable explanations such as 'It's at the accountants' and be prepared to demand its availability and revisit; repeated excuses and the lack of documentation should be escalated via the Enforcement Procedure and in connection with HMRC and the Local Authority (LA)
- price-lists and 'shelf talkers' to see if these show significant variance from general trade levels
- labelling, particularly for lesser known brands

Inspectors should adjust the risk rating to reflect the visit findings.

### 1.4.7 The major multiples

It is common practice for the head offices of large multiples (such as Waitrose, Tesco, Sainsbury, Marks and Spencer, ASDA), where control is exercised and documentation kept, to be remote from the distribution / storage depots where stock is held.

In some cases, the depots and head offices will be located in different regions. In most instances, large multiples are importers as well as retailers and some form of dual control is required.

It is policy for the Inspector in whose region the head office is located to assume the role of 'lead' Inspector and to deal direct with the company concerned. The appropriate regional Inspector carries out visits to the depots, when required, but any problems that may arise are referred to the lead Inspector. Good co-operation between Inspectors and head offices is essential.

Visits to the head offices of traders should follow the normal format:

- updating our records using the trader questionnaire
- updating the trader using the trader discussion topics leaflet
- discussing previous infringements and corrective action
- identifying any proposed changes to activities
- updating contacts as staff changes frequently occur at these traders

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### 1.4.8 Agents and brokers

Although agents and brokers are rarely the legal owners of the wine, they play an important role between wineries and wine purchasers. In the event of issues surrounding authenticity and traceability, they may be in a position to supply important additional information. They may also be the agent / broker sourcing wines for several traders. In this instance, if future corrective actions were

required, it could be easier to communicate this through the agent / broker as opposed to several separate traders.

### 1.5 Investigations

#### 1.5.1 Overview

All Inspectors will receive training in Investigation Skills and police and criminal evidence act (PACE). This will include periodic refresher training. Where there is the likelihood that formal notices will be served or a prosecution might result, Inspectors must follow PACE guidance.

Investigations may stem from:

- routine visits
- information obtained from other Inspectors or other sources
- liaison with other enforcement agencies
- requests from other countries

Inspectors must carry out a pre-visit risk assessment, particularly if the trader is unknown.

Ideally, two Inspectors should be involved in potentially serious investigations to assist in the collection and corroboration of evidence and to help ensure the safety of the officers involved.

If at any point of the visit the inspector(s) consider their safety is compromised, the visit should be aborted and the HOD informed.

In any event, Inspectors must be aware that investigations can result in formal action being taken either against the trader concerned or against other traders in the supply chain.

In the event that action is required, inspectors should follow the enforcement procedures set out in section 3 on 'Enforcement'.

In the event that no action is required, the inspector should consider if any information obtained may be of value to other enforcement agencies.

### 1.6 Vineyard visits

#### 1.6.1 Vineyard visits

Visits to vineyards fall into the following categories:

1. initial registration or deregistration
2. routine
3. winery record checks
4. investigation

#### 1.6.2 Registration

All vineyards above 0.1ha (or smaller size if used commercially) must legally be registered with the FSA. It is an offence for a vineyard holder not to register their vines within 6 months of them being planted.

The need for an Inspector to register a vineyard on the database will stem from:

- a direct notification from the vineyard holder
- information received from other Inspectors
- information regarding the existence of the vineyard received from other parties (for example, vine suppliers or contract winemakers)

It is generally preferable for Inspectors to visit the vineyard to carry out the registration process using annex 17 on 'WSB 13' form. Detailed instructions on completion of the form are included as 'Notes for Guidance'.

Registration may be done remotely by telephone and email, especially if the Inspector will not be visiting the location of the vineyard for some time.

For newly planted vineyards there may be little to see, but a registration visit does help to explain the FSA remit and to foster a good working relationship with the vineyard holder.

As part of the registration process Inspectors must ensure that they gather details of:

- the holder's name and contact details
- the site location
- the nature of the vineyard parcels and their intended use (PDO or PGI)
- the types of vines planted, the dates of planting and the planting density

- the current and proposed activities, and in particular:
  - will grapes be sold and, if so, to whom?
  - will wine be made on site?
  - will wine be made on site for other growers?
  - will grapes be sent to other contract winemakers and, if so, to whom?
  - will wine be sold?

Inspectors must explain:

- the FSA remit
- the need for the holder to complete annual harvest declaration or production declaration
- the need to maintain accurate records
- the use of Commercial Accompanying Documents
- the background to the UK wine schemes and the role of the UKVA
- the labelling requirements
- the need to notify changes to plantings
- the need to consult HMRC and the LA if wine is to be made on site
- if a winemaker, the need for certain notifications to be made.

Inspectors must ensure that the vineyard details are recorded on the database. The UKVA Guide to EC Wine Legislation, available as an electronic document via the UKVA website, should be brought to the attention of the holder annex 5 on 'UKVA label guidance'.

### 1.6.3 Routine visits

The general objectives are broadly similar to those applying to traders and annex 4 on 'Vineyard questionnaire' can be used as an aide memoir:

- checking contact details
- checking changes or proposed changes to activities or status
- checking accuracy of parcels information against the information stored on the WSB database
- ascertaining the likely size and quality of the harvest – such as frost damage, budburst, flowering, mildew

- establishing who grapes will be sold to or purchased from
- establishing where wine will be made
- for contract winemakers, establishing for whom wine will be made and whether there are any 'new' vineyards not on the register
- establishing the types and quantities of wine that will be produced
- checking commercial accompanying document, winery records and labels

Inspectors must ensure compliance with the production rules and they should ensure that the need to submit annual harvest declaration, production declaration and production declaration – other uses are properly understood.

Inspectors must also explain the rules for notifications of enrichment and de-acidification, and the use of commercial accompanying documents.

### **1.6.4 Quality Wine Scheme Protected Designation of Origin (PDO)**

The results of all PDO, Protected Geographical Indication (PGI) and Varietal Wine applications are made available to Inspectors. A verification check of the winery records is an integral part of the process and any wines where the records do not adequately support the application should not be sold.

Where Inspectors find wines that do not meet the requirements, they should advise the holder as to the appropriate remedial action such as:

- re submission to a different scheme
- re-labelling
- use for other non-wine products
- destruction

Inspectors should note that the use of the winery record form is not compulsory; indeed, many winemakers are now using electronic records. Any alternative system of record keeping must include the same information as shown on the winery record form and the Inspector must be satisfied that it is fit for purpose.

### **1.6.5 Harvest activities**

Leading up to and during the annual harvest, Inspectors are expected to devote a considerable part of their time visiting larger growers and winemakers. Inspectors should:

- check likely size and quality of harvest – frost damage, budburst, flowering, mildew, and whether emergency enrichment might be requested
- check sugar levels of grapes using a refractometer (see annex 6 on ‘Refractometer guidance’) or hydrometer; a reference chart for calculating natural potential alcohol (see sub-section 2.1.2 on ‘Oechsle Readings’) in the grapes and for calculating permitted sugar additions for enrichment is shown in on ‘Enrichment conversion table’
- establish who grapes will be sold to or purchased from
- check where wine will be made or, for contract winemakers, who wine will be made for – whether there are any ‘new’ vineyards not on the register
- check what types and quantities of wine will be produced
- check winery records, especially in respect of checking enrichment levels, de-acidification and check commercial accompanying document receipts
- remind growers and producers of the Production and Harvest Declaration process

Inspectors should cross check the database for any new vineyards or vineyards coming into production. They must register the vineyards and / or amend the parcels data, or advise other Inspectors if such vineyards are in a different region.

### 1.6.6 Additional vineyard visits

The general concept of special visits to vineyards is similar to that outlined for traders. In particular, additional visits may be made to:

- check harvest and / or production progress
- carry out random checks of enrichment, blending, dosage
- carry out winery record verification checks in connection with UK wine schemes
- investigate discrepancies or make follow up checks on annual declarations
- discuss new proposals by the holder to make significant changes

## 1.7 Inspection rating scheme

### 1.7.1 Background

The scheme was last revised in January 2008. The scheme takes account of:

- nature of business
- point in supply chain
- turnover
- history of compliance
- quality of management

A points score is allocated dependent on the type of activity and the perceived risk. In determining the final score, compliance history and management capability are factored in. The score determines the inspection frequency.

The inspection frequency may be varied at the discretion of the inspector dependent on circumstances at the time, such as allegations of fraud or risk to.

### 1.7.2 Definitions

The following terms are used:

- HMRC Tax Warehouse  
 Consignments of wine are held in duty suspension before entry into circulation.
- Bottling and Re-labelling Operations  
 The processing of imported bulk wine shipments is a high risk operation.
- Trader / Warehouse

Traders occasionally import duty paid consignments. This is common for imports from other member states and calls for a higher inspection frequency.

### 1.7.3 Scoring system

Traders

Activity	Score
HMRC approved tax warehouse, under contract to hold duty suspended products and operating with 15 or more traders.	30
HMRC approved tax warehouse, under contract to hold duty suspended products and operating with less than 15 traders.	20
Commercial bottling operations. Imported bulk consignments for bottling & labelling in excess of 150,000 hl per year.	20
Trader using HMRC bonded warehouse and bottling & labelling operations (for direct imported consignments).	20

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Trade through a duty paid warehouse at the trader's premises, in excess of 250,000 cases per year.	20
HMRC approved tax warehouse for trader's own duty suspended products.	10
Trade through a duty paid warehouse at the trader's premises, in excess of 100,000 cases per year.	10
Other commercial bottling operations. Imported bulk consignments or rebottling or re-labelling.	10
Supermarkets & multiple wholesale / retail traders.	10
Trade through a duty paid warehouse at the trader's premises, in excess of 50,000 cases per year.	5
Trader using an Occasional Importer Licence.	2
Head-Office of a wine importer, not holding stock with responsibilities for purchase, distribution & marketing.	5
Trade through a duty paid warehouse at the trader's premises, with less than 50,000 cases per year.	0
Agents or Agencies, or responsible in the UK as commission based facilitators.	0
Brokers undertaking wholesale activities.	0
Ancillary traders in secondary wholesale market.	0

<b>Activity – additional points</b>	<b>Score</b>
Import of third country products	3
Design of own labels	3

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### Vineyards

Activity	Score
Contract winemakers	20
Winemakers (other than hobby)	10
Active vineyards where wine is sold	5
Active vineyards where grapes are sold; hobby vineyards.	3
Abandoned vineyards	0

### History of compliance

Assessment	Score
Poor – general failure to meet statutory requirements; standards consistently low	10
Satisfactory – a typical business with some minor non-compliance	3
Good – a high standard of compliance	1

### Quality of management

Assessment	Score
Poor – little technical knowledge or appreciation of risks and quality control; significant numbers of infringements	10
Moderate – good knowledge of regulations and control procedures	3
Good – good management systems, documented records and supplier checks; few significant complaints	1

### 1.7.4 Inspection frequency

#### Traders

Score	Visit frequency	Category
30+	2 visits per year	2+
20+	1 visits per year	1
10+	1 visit every 2 years	0.5
5+	1 visit every 3 years	0.33
0	Low risk; contact every 4 years; visit if no response or change of category	0

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### Vineyards

<b>Score</b>	<b>Visit frequency</b>	<b>Category</b>
20+	2 visits per year	2
10+	1 visit per year	1
5+	1 visit every 2 years	0.5
0	Low risk; contact every 4 years; visit if no response or change of category	0

Hobby vineyards are those where grapes are vinified under contract, or wine is made on site for personal consumption only. Production volume is usually less than 10 hectolitres.

## 2. Sampling

2.1 Annual grape sampling

2.2 At the time of sampling

### 2.1 Annual grape sampling

#### 2.1.1 Procedure

Under Regulation 555/2008 there is a statutory requirement to carry out an annual grape sampling exercise within the UK. The purpose of this exercise is to help identify the production of fraudulent wine.

The number of samples to be collected is proportionate to the overall production level. In the UK, we collect four 10kg samples, one sample from each of four vineyards in two separate regions.

In order to assist with meaningful comparisons, two vineyards in one of the regions will also be sampled in the following year. Vineyards that have been sampled two consecutive years will be replaced by vineyards from a separate region.

The Technical Inspector will collate information of all vineyards sampled. Vineyards chosen for each region will be at the discretion of the local Inspector in conjunction with the Technical Inspector.

In advance of sampling, the Inspector of the selected vineyards will:

- contact the vineyard holder and explain the purpose of the annual grape collection exercise, seek their consent to participate and identify a predicted date when sampling might occur
- post, email or deliver the 'Grape sampling request letter' at annex 7 to the selected vineyard holders
- complete the 'Grape sampling questionnaire' at annex 8 by reference to the parcels information on the database; any other inconsistencies or queries should be resolved with the vineyard holder either in advance, if possible, or on the day of sampling

- ensure the grape variety to be sampled should be selected with the agreement of the vineyard owner / representative; during difficult harvest conditions, Inspectors should try to avoid asking for samples of the most commercially valuable grapes
- be aware that a payment of £30 per 10kg of grapes can be made by the Inspector to the vineyard owner if they are unwilling to gift the grapes for the sampling exercise; in the event of the Inspector making a payment, the amount paid should be reclaimed through iHR with agreement of the HOD
- maintain effective communications with the vineyard owner / representative regarding:
  - anticipated times of harvest, especially if there have been adverse weather conditions that might have affected the crop
  - the likely Oechsle readings of the selected grapes to ensure that only ripe grapes are sampled at or as close as possible to the time of harvest; a minimum Oechsle reading of 46oe is required
  - the likely weather prospects around the date of harvest, as in theory only dry grapes should be collected
- contact Topspeed (Operations centre 01565 631840; Freephone 0800 8562464; email [info@topspeedcouriers.co.uk](mailto:info@topspeedcouriers.co.uk)) to arrange next day delivery service of sample unless it is more cost efficient for the Inspector to deliver once a confirmed sampling date has been agreed with the vineyard; alternatively, if convenient, the Inspector may choose to deliver the samples directly to Campden BRI
- notify Geoff Taylor or Rachel Rees at Campden BRI of the date of sample arrival Tel: +44 (0) 1737 824 244 (reception)

### 2.1.2 Oechsle readings

This table may be used in conjunction with a suitable calibrated hydrometer or refractometer when carrying out enrichment operations to calculate the natural strength of the wine before enrichment and the actual alcoholic strength after enrichment. The figures in the Oechsle columns indicate the approximate amount of sugar in the must or fermenting wine in degrees Oechsle. The figure in the alcohol column indicates the approximate alcoholic strength. The table is not definitive and should be used together with the EU approved method of analysis for alcoholic strength laid down by Commission Regulation (EEC) No 2676/90.

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Oechsle	% Alcohol	Oechsle	% Alcohol	Oechsle	% Alcohol
40	4.4	78	10.5	116	16.3
41	4.5	79	10.6	117	16.4
42	4.7	80	10.8	118	16.6
43	4.8	81	10.9	119	16.7
44	5.1	82	11.1	120	16.9
45	5.3	83	11.3	121	17.0
46	5.5	84	11.4	122	17.2
47	5.6	85	11.6	123	17.3
48	5.8	86	11.7	124	17.5
49	5.9	87	11.9	125	17.5
50	6.0	88	12.0	126	17.8
51	6.2	89	12.2	127	18.0
52	6.4	90	12.4	128	18.1
53	6.6	91	12.5	129	18.3
54	6.7	92	12.7	130	18.4
55	6.9	93	12.8	131	18.6
56	7.0	94	13.0	132	18.8
57	7.2	95	13.0	133	18.9
58	7.3	96	13.1	134	19.1
59	7.5	97	13.3	135	19.2
60	7.7	98	13.4	136	19.4
61	7.8	99	13.6	137	19.5
62	8.0	100	13.8	138	19.7
63	8.1	101	13.9	139	19.8
64	8.3	102	14.1	140	20.0
65	8.4	103	14.2	141	20.2
66	8.6	104	14.4	142	20.3
67	8.7	105	14.5	143	20.5
68	8.9	106	14.7	144	20.6
69	9.1	107	14.8	145	20.8
70	9.2	108	15.0	146	20.9
71	9.4	109	15.2	147	21.1
72	9.5	110	15.3	148	21.3
73	9.7	111	15.5	149	21.4
74	9.8	112	15.6	150	21.5
75	10.0	113	15.8		
76	10.2	114	15.9		
77	10.3	115	16.1		

### 2.2 At time of sampling

#### 2.2.1 Equipment

The following items are required:

- refractometer
- secateurs (vineyard owner should be allowed the option of providing secateurs to avoid the potential for disease and cross contamination)
- scales / spring balance – if the vineyard does not have accurate means of weighing
- one crate per 10kg sample – a single plastic crate (with a lid capable of being secured to the crate by use of cable ties or similar) of suitable size to hold 10kg (400mm x 550mm x 330 mm = 63 litres) of grapes is to be obtained locally by Inspectors; a suitable item is available from Wickes product code 191043 (as backup the laboratory may be able to provide previously used crates) or can be sourced through BSU
- paper towels or tissues should also be taken if the grapes are likely to be wet
- cable ties, long enough to securely retain the lid on the crate during transport
- plastic documentation wallet
- documentation associated with sampling exercise.

#### 2.2.2 Procedure

- The Inspector must check the Oechsle reading (see sub-section 2.1.2) of the selected grape variety using a refractometer (see annex 6) to ensure the sugar content of the grapes is in excess of 46oe, which is the lower limit for producing a legal wine.
- Ideally, the higher the Oechsle reading the better, so Inspectors should take a number of refractometer readings. If the intended sample is not ripe the Inspector must select an alternative variety that is ripe.
- Selected grapes should be dry and there is a presumption that sampling should not be carried out during periods of heavy rain. Grapes collected during inclement weather may need drying before being despatched.
- At least 10kg of the selected grape variety must be collected.
- The sample should be a representation of the whole plot.

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- The completed grape sampling questionnaire and vineyard information should be sealed in the plastic documentation wallet and placed in the crate with the sample grapes.
- The crate should be sealed using cable ties.
- Delivery address and the vineyard details / sample reference should be attached to the outer surface of the crate lid.
- Photos should be taken of the sealed crate.
- Sample to be delivered to FAO Geoff Taylor / Rachel Rees Campden BRI Centenary Hall, Coopers Hill Road, Nutfield, Surrey RH1 4HY.
- Sample to be delivered by Topspeed couriers or the Inspector whichever is the most cost efficient method.

The aim should be to collect grapes on the same day or consecutive days to send in one consignment to Campden BRI to minimise deterioration.

Inspectors should be aware of the following and, if necessary, advise the vineyard holder accordingly:

- Campden BRI will notify the Technical Inspector if there are any issues with the quality or integrity of the samples when received at the laboratory. In this event it may be necessary to repeat the sampling if grapes are still available at the vineyard.
- Campden BRI will send a report to the Technical Inspector after completion of vinification in January or February.
- The Technical Inspector will advise the relevant Inspectors of any issues associated with the sampling technique.
- Campden BRI will send the bottled wines to FERA in York for distillation and isotopic ratio analysis. FERA will send the results to the EC laboratory at the Joint Research Centre and also notify Wine Standards.

It is permitted to share the results with the vineyard holders but the results will not be readily understandable as they will only refer to numeric levels with no indication of their meaning.

During the course of routine visits, sampling of wine products may be required. The sampling could be to ascertain the legality of a wine, any potentially harmful implications for consumer health or as part of an agreed Wine Standards sampling programme.

Sampling of all wine sector products should be carried in accordance with the instructions detailed below and also shown in annex 3 on 'Wine sampling aide memoir'.

1. At a new trader's premises introduce yourself, show your warrant if required and explain the purpose of the visit and the reason for sampling. At an existing trader explain the purpose of sampling.
2. For products in standard bottle formats, the samples must be representative of the entire lot. Ideally, the samples should not all be taken from same case. Inspectors should also have regard to possible lot number variations.
3. For products in containers of more than 60 litres, the samples are representative of the contents of the container. Samples of bulk products (from containers of more than 60 litres) shall be collected in containers with a capacity of not less than 0.75 litres).
4. Samples required:
  - **for analysis in EU** – collect **5 samples** and secure in tamperproof bags (1 left with trader/ representative, 1 control sample held by Inspector, 3 despatched to EU for analysis)
  - **for an investigation** – collect **3 samples** and secure in tamperproof bags (1 left with trader / representative, 1 held by Inspector, 1 sent for analysis)
  - **at random based on Inspector's suspicion of legality of wine** – collect **3 samples** and secure in tamperproof bags (1 left with trader / representative, 1 held by Inspector, 1 sent for analysis)

**Note:** On the occasions listed above, the sampling Inspector shall record details in personal FSA red evidence book containing the basic details of the sampling (for example, date, place, time, container / lot / rotation number of product, description, quantity of consignment) and any special observations of importance (for example, comments by the owner).

Results will be emailed to Wine Standards Technical Inspector who will inform the Inspector who requested the sampling. The trader should be made aware of results and any action required. Results to be updated in analysis folder on Wisdom by the Inspector.

- **for FSA WSB agreed sampling programme** – collect **2 samples** and secure in tamperproof bags (1 held by Inspector, 1 sent for analysis);

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for example, allergen sampling programme, no movement control in place on wine or no suspicion relating to authenticity of wine

Where samples are to be left with the trader, the Inspector should invite the trader to choose a sample for retention and make a note of the sample number retained. If the trader or their representative is not present, the Inspector shall choose the sample to be left at the premises and record the details accordingly.

5. Clearly complete the exterior of the tamperproof bag sections with:
  - Authority – FSA
  - Identification ref no. – ‘S’ followed by WSB number / sample date / sample number / Inspector (for example, S5091/071114/01AJW); for unregistered traders replace WSB number with 9008
  - Description – description of the wine
  - Time and date seized / produced – time and date
  - Where seized / produced – traders name; if unregistered trader state the address
  - Seized / produced by – Inspector’s name in block capitals
  - Signed – Inspector’s signature
6. Insert the sample into the tamperproof bag and seal, removing as much air as possible.
7. Complete the ‘WSB 7 sampling certificate’ for UK analysis or the ‘WSB 7(a) sampling certificate’ for EU analysis. If trader permits, make 2 photocopies and distribute as below:
  - original to accompany wine to the chosen laboratory
  - copy 1 to be left with trader as a receipt
  - copy 2 to be retained by the Inspector
8. If no photocopying facility is available, retain the original and on returning to the office scan the document and distribute as below:
  - original to accompany wine to the chosen laboratory
  - scan to be emailed to trader as a receipt; hard copy sent by post with proof of posting if requested by trader
  - scan to be electronically retained by Inspector on Wisdom

9. Samples should be sent for analysis on a routine basis. Inspectors should try to co-ordinate deliveries to make use of the batch price discounts or as appropriate depending upon the urgency of the required results.
10. The Inspector should select which laboratory (FERA or Campden BRI) the samples should be despatched to, based upon financial and turnaround time considerations. The up to date costs and turnaround times are available on the sampling spreadsheet stored on Wisdom.
11. Details of the sample, analysis requested and times of submission to FERA or Campden BRI are then updated on to the sampling spreadsheet stored on Wisdom.
12. Delivery to the chosen laboratory:
  - Inspectors should arrange samples to be collected by Topspeed and sent to the requested laboratory on a next day delivery service.
  - Booking should be made at <http://www.topspeedcouriers.co.uk/> – stating wine collection, number of bottles, requirement to be packaged, collection address, delivery address, date of collection, a 2 hour time window for collection and contact details of the originator.
  - Contact details for Topspeed – Operations centre 01565 631840 or Freephone 0800 8562464.
  - The Operations office will confirm the collection and / or renegotiate a suitable collection window if needed.
  - The original WSB 7 sampling certificate (annex 3) should be handed to the Topspeed driver with the samples. The driver will place a bubble wrap sleeve around the bottle and secure it and any documentation with an elastic band or tie and attach a barcode to each individual bottle. The driver will leave confirmation of collection detailing the numbers of the barcodes. This will be evidence of collection.
  - The bottle(s) will be placed in a box and / or case to prevent them moving around the vehicle and will be delivered to Topspeed's hub in Knutsford.
  - The bottles will be reloaded onto the daily outward delivery run the next day and will be delivered early morning at the sample collection point.
  - All samples should be despatched via Topspeed from the Inspector's home location to ensure an auditable chain of custody. On rare occasions, it may be financially beneficial to the FSA for the Inspector to personally deliver samples to either laboratory. A receipt must be

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obtained from the laboratory and the WSB7 signed by the Inspector and laboratory at the time of sample drop off.

13. Contact the laboratory by email to inform them of the samples being despatched:

- FERA – Mark Harrison:  
[mark.harrison@fera.gsi.gov.uk](mailto:mark.harrison@fera.gsi.gov.uk)
- Campden BRI – Geoff Taylor:  
[Geoff.Taylor@campdenbri.co.uk](mailto:Geoff.Taylor@campdenbri.co.uk)
- Campden BRI – Rachel Rees:  
[Rachel.Rees@campdenbri.co.uk](mailto:Rachel.Rees@campdenbri.co.uk).

14. Despatch samples to:

Mark Harrison  
FERA  
Sand Hutton  
York  
YO1 1LZ

Tel switchboard: 01904 462000; direct line 01904 462519

OR

Geoff Taylor  
Attention of the Wine Department  
Campden BRI  
Centenary Hall  
Cooper's Hill Road  
Redhill  
Surrey  
RH1 4HY

Tel switchboard: 01737 822272; direct line: 01737 824272; mobile 07775 781132

Email : [Geoff.Taylor@campdenbri.co.uk](mailto:Geoff.Taylor@campdenbri.co.uk);

[Rachel.Rees@campdenbri.co.uk](mailto:Rachel.Rees@campdenbri.co.uk).

### 3. Enforcement

- 3.1 Introduction
- 3.2 Powers of an Authorised Officer
- 3.3 Procedure to enter by a Justice's Warrant
- 3.4 Types of action

#### 3.1 Introduction

##### 3.1.1 General approach

The primary role of the Wine Standards team is to try to ensure the safety, authenticity, quality and correct labelling of wine sector products.

The principle objective is to seek compliance by offering education, guidance and advice and by only taking formal enforcement action in appropriate cases where regulatory intervention is necessary in protection of the consumer.

The FSA follows the principles contained in Food Law Code of Practice (2015) and the principles of hierarchical enforcement. The Wine Regulations 2011 (as amended) provide extensive powers to Inspectors and these must be used proportionately if the general support and goodwill of the trade is to be maintained. However, it is essential that businesses acting dishonestly are dealt with in a more robust way than other businesses that are trying to comply with the law.

Inspectors should use enforcement powers where it is appropriate to do so based upon the principles and in connection with enforcement matrices. Other than in emergency situations Inspectors should consult the Technical Inspector / HOD and / or Legal prior to serving any formal notices.

**Powers of entry, execution of warrants and / or powers to serve notices apply at all importers, bottlers, bonded warehouses, wholesale traders and vineyard premises, irrespective of whether or not the business is actually registered with the FSA. However, Inspectors must note that powers of entry without a warrant are limited in respect of private dwellings.**

### 3.1.2 Priorities

Many infringements are 'technical' in nature, such as wrong heights or incorrect formats for certain information on labels, whereas others are more substantive and serious in nature.

Inspectors should primarily concentrate on the more substantive matters and should only consider more formal action in respect of minor issues if they are linked to more serious infringements relating to the same product or are as a result of repeated non-compliance by the FBO.

Serious or substantive infringements in this context include:

- something affecting consumer safety, such as a breach of winemaking rules or missing allergens information
- loss of traceability, such as incorrect bottler or importer details and / or lack of supporting documentation
- serious mis-description or incorrect classification of the wine, including misuse of protected terms or incorrect provenance statements

In considering what type of action to take Inspectors should consider the following in conjunction with annex 10 on 'Infringement matrix still wine and annex 11 on 'Infringement notice sparkling wine'.

- Is the offence serious?
- Is the offence deliberate?
- Is it a repeated offence after previous warnings have been given?
- Has the FBO exercised due diligence?
- Is the FBO aware of the infringement and already trying to take corrective action?
- Has the FBO got a good track record regarding compliance and seeking advice?
- Is the FBO co-operative or obstructive?
- What is the volume of the product, the intended market and the likely sell through period?

Inspectors must record in the visit report, the justification for wishing to take formal action and should explain this to the Technical Inspector and / or Legal when drafting formal notices.

### 3.1.3 Use of official powers

Generally, the Wine Standards enforcement responsibility starts at the moment a wine sector product enters into or is intended to enter into 'free circulation' within the EC.

In practice, this covers wine sector products stored or distributed at bonded warehouses, bottling plants, importers, shippers, wholesalers or cash and carry premises and goods at UK vineyards and wineries.

Wine Inspectors are authorised by the FSA to enforce the provisions of the UK Wine Regulations 2011, as amended. These regulations in turn specify the relevant EU provisions that can be enforced within the UK.

## 3.2 Powers of an Authorised Officer

### 3.2.1 Powers of entry

The FSA authorises Inspectors to exercise the powers listed in Regulation 8 of the UK Wine Regulations 2011 including powers to serve formal notices in their own name on behalf of the FSA.

Inspectors may enter premises, including land or a vehicle, other than those used as a domestic premises, at any reasonable time:

- for the purposes of ascertaining whether an offence has been or is being committed
- to search for evidence, to inspect any material or article, examine any register, record or document
- to seize or secure for examination samples and / or documentary evidence

### 3.2.2 Refusal to allow entry

Whilst Inspectors have a general power of entry and can resort to obtaining a warrant if needed (see below), they should use their professional judgment to decide whether the grounds given for refusal of entry are reasonable in the circumstances and try to negotiate entry at another time if they consider it appropriate.

If at any time the FBO or their representatives become abusive and or threatening, Inspectors must withdraw immediately and notify the Technical Inspector / HOD.

### 3.3 Procedures to enter by Justice's Warrant

#### 3.3.1 Overview

Under Regulation 9 of the UK Wine Regulations, Inspectors may seek to obtain a Justice's Warrant to enter premises. One or more of the following situations must exist:

- admission has been refused or refusal is expected
- giving notice of intended entry would defeat the object of entry
- entry is required urgently
- the premises are unoccupied or the occupier is temporarily absent

Inspectors must therefore ensure they have sufficient evidence to support an application for a warrant. However, as indicated above, Inspectors should not automatically seek to obtain a warrant on every case where entry is refused.

Inspectors must seek approval from the HOD or Technical Inspector to obtain a warrant to enter premises, particularly to enter domestic premises. They must then contact FSA Legal Enforcement Advisers (Richard Withers 01904 232063 or Gareth Williams 0207 2768648) who will make the necessary arrangements for the Inspector to obtain a warrant.

If a warrant is granted, Inspectors must ensure that they are accompanied by another Inspector or such other persons as considered necessary to ensure the visit can take place safely. If the Inspector considers that a breach of the peace may occur on execution of the warrant, then the police must be notified and requested to attend before entry is affected.

The warrant must be executed within three months or such other time as allowed for by the Justice of the Peace and it may only be used once.

#### 3.3.2 Forced entry

Although the Warrant to Enter Premises allows for the use of force to gain entry when necessary, Inspectors should never attempt a forced entry themselves.

Furthermore, even if arrangements have been made to enter premises by force, the Inspector must still try to notify the FBO of the intention to execute the warrant and to try to seek their attendance, unless so doing would negate the purpose of entry.

Inspectors must ensure that they are accompanied by another Inspector or such other persons as considered necessary to ensure the visit can take place safely.

Ideally, if the premises are on a farm or light industrial site or similar, where there are security staff and / or landlord representatives available, try to obtain access using their keys to avoid damage to property.

If no other options exist, the services of an approved locksmith and alarm engineer must be obtained to ensure that the premises can be entered with as little damage as possible and that they can be left properly secured following the visit.

The Inspector must show the warrant to all parties attending. The Inspector may be asked to sign a disclaimer for those individuals who affect entry.

In addition, the police should be invited to attend to reassure them that the forced entry is officially sanctioned and to prevent any possible breach of the peace should the FBO or his representatives return whilst entry is being made.

A copy of the warrant and any subsequent notices must be left securely in a prominent position within the premises.

Photographs should be taken at each stage of the execution of the warrant to identify any damage, the re-securing of the premises and to prove that documentation was left on site.

### **3.3.3 Entry warrants in Scotland**

Separate arrangements exist for obtaining a warrant in Scotland. In the first instance, the Inspector can obtain advice by consulting an FVC.

A warrant required in Scotland must be drafted by the Crown Office. Inspectors should contact FSA Legal who will make a request to the office of the local Procurator Fiscal. A 'fiscal depute' will draft the warrant application and make an appearance before the Sheriff. The Crown Office offer 24 hour coverage for emergency cases.

## **3.4 Types of action**

### **3.4.1 Overview**

Inspectors should use their judgement in determining what action they or the FBO will need to take following the discovery of an infringement. Inspectors must

always consider the seriousness of the infringement itself and the likely level of co-operation from the FBO.

### 3.4.2 Future corrective action

For less serious infringements that can be corrected by changing labels or the information to be shown on future documentation, Inspectors should normally offer advice to the FBO backed up by the use of a 'Visit advice document' at annex 12.

Inspectors must consider whether the FBO will, based on previous history or their attitude at the time of the visit, be likely to follow the advice and take the corrective action requested.

If the Inspector is of the opinion that this is unlikely (for example, if previous requests have not been dealt with in a timely manner), then the Inspector may feel it is appropriate to consider the use of the hierarchy of enforcement.

### 3.4.3 Warning letter

An Inspector may choose to send a warning letter to an FBO if it is felt that the matter will be taken more seriously or if the Inspector feels that more formal action may follow at a later date. Such a letter must be polite and explain the nature of the problem as well as the reasons why the matter is being drawn to the FBO's attention in writing.

The letter should indicate whether infringements are being repeated or if the same sorts of problems are being encountered with various wine products. The letter should also suggest ways in which the FBO can resolve any current problems and prevent similar problems from occurring in future.

The letter should draw the FBO's attention to the fact that more formal action could be taken in future. The FBO should be asked to respond in writing setting out any representations they wish to make, or any assurances they may wish to make in respect of corrective action and preventative action to prevent future non-compliance.

### 3.4.4 Warning notice

Where there is documented history of an FBO failing to comply with previous advice or warning letters and / or where serious problems are found, Inspectors may choose to serve a formal Warning Notice under Regulation 10. See chapter 9 on 'Forms' for 'WS ENF 1/3'.

Other than in an emergency situation, Inspectors must seek the advice of the Technical Inspector and / or Legal when drafting the notice and follow the advice regarding service of notice, including to whom any copies should be sent.

Inspectors must record all of the details in a visit report and indicate the date of service on the database. Copies of the notice and any photographs or supporting documentation must be placed within the relevant FBO file on Wisdom.

### **3.4.5 Enforcement notice**

In cases where more serious infringements are found, or where repeated non-compliance warrants it, an Inspector may serve an Enforcement Notice under Regulation 11, requiring the FBO to take action to resolve an infringement within a specified time. See chapter 9 on 'Forms' for 'WS ENF 1/1'.

Other than in an emergency situation, Inspectors must seek the advice of the Technical Inspector and / or Legal when drafting the notice and follow the advice regarding service of notice, including to whom any copies should be sent.

Inspectors must ensure that the FBO or the person in control of the wine is made aware of the appeals process detailed on the reverse of the notice.

Inspectors must record all the details in a visit report and indicate the date of service on the database. Copies of the notice and any photographs or supporting documentation must be placed within the relevant FBO file on Wisdom. Where a Regulation 12 "Prohibition Notice" has been placed on a consignment of wine that appears to fail to comply with the EU or domestic wine legislation, Inspectors should make appropriate further inquiries to authenticate its provenance (See sub-section 3.4.12 and 3.4.13 in this section on Prohibition notices for further information). Where the FBO cannot authenticate the wine, or provide satisfactory documentation for the consignment, officers should encourage the business to undertake its secure destruction at an HMRC approved facility.

Where destruction is not forthcoming, Regulation 11 of The Wine Regulations 2011, provide powers for an authorised officer to serve an "Enforcement Notice" requiring a person to take specified steps to remedy a contravention / remedy that contravention to the fullest extent possible or remedy those matters that make it likely that a contravention will arise.

Where it is impossible to remedy the lack of provenance of a consignment, Inspectors may utilise an "Enforcement Notice" to direct a person to dispose of the wine at a secure destruction facility, given that the wine cannot be released onto the market and there is no assurance of the authenticity of the product.

Businesses should also be encouraged to improve their documentary procedures and address any root cause that led to the contravention if this is within their control. Inspectors should communicate any issues that led to the detention of the wine back to the authorities in the country of origin where the issue was identified to have occurred (you may need to consult with the Technical Lead before doing so to ascertain the appropriate contact).

When Inspectors issue an “Enforcement Notice”, they should inform the Wine Team Manager, Technical Lead and FSA Legal.

### **3.4.6 Closure procedure**

On compliance with the notice the Inspector must record the details and the closure date on the database.

### **3.4.7 Movement controls**

Any movement control of wine products can seriously damage the commercial value of the product and possibly damage the reputation of a trader that cannot fulfil orders. The removal of the wine may involve a consignment of several thousand cases and cause serious interference with the trade. Nevertheless, the lack of traceability, incorrect, misrepresented or fraudulent use of label information and / or safety concerns are potentially serious infringements that must be controlled.

Movement controls fall into two categories and both must be used with caution.

### **3.4.8 Temporary movement control**

At certain times, Inspectors will agree with a person in charge of a batch of wine that the wine should not be moved until further investigations or certain labelling alterations have been carried out.

This approach is beneficial in bonded warehouses, in particular, to enable further time for the Inspector to make further enquiries or to carry out analysis of the wine.

The temporary movement process is considered to be a proportionate response to avoid the need for formal action against an otherwise compliant operator, for example, the bond or bottling company where goods are stored or processed for third parties.

Inspectors must bear in mind that temporary movement controls are, in effect, an informal agreement and so Inspectors must apply this approach only where they are confident that the person in charge of the consignment will honour their agreement. Where in doubt, or if there is serious cause for concern, a Prohibition Notice should be applied.

### 3.4.9 Procedure

1. Record the relevant details of the brand, quantities, product owner.
2. Take photographs, obtain copies of the relevant documents and, if necessary, take samples.
3. Explain the nature of the problem to the person in charge of the wine and request that the wine is put on hold.
4. Confirm by using a Visit Advice Document and / or email.
5. Contact the owner of the wine, as soon as practicable, to:
  - explain the problem and confirm by email and / or by sending a copy of the Visit Advice Document
  - ascertain the quantity of current stocks held in bond and elsewhere
  - ascertain where the stock has been distributed
  - ascertain if more stock is en route and the quantities and intended arrival dates
  - ascertain their intentions regarding corrective action, or if corrective action is not possible:
    - their proposals for ongoing secure storage
    - whether, with LA agreement, the product can be used as a non-wine sector product
    - whether, subject to adequate traceability and HMRC consent, it can be exported outside the EU
    - whether, with HMRC approval, it should be destroyed at the owner's expense at an approved waste disposal facility; in this event, evidence of destruction should be obtained
6. If the wine is the responsibility of an FBO in a different Inspector's area, the Inspector responsible for the Temporary Movement Control must inform that Inspector of the situation as soon as practicable. The two Inspectors must agree a plan of action as to which of them will take ownership of the situation.

7. If the brand of wine is likely to be widely distributed, all Inspectors should be advised of the problem and asked to look out for the brand when visiting other premises.
8. Record details of the infringements on the database.
9. If necessary, advise FCU Incidents team, HMRC and / or Trading Standards Officer.
10. If a suspect wine, enter the details in the Investigations log and set up a brand folder on Wisdom.

### **3.4.10 Closure procedure**

Once an Inspector is satisfied that the matter has been resolved, they must notify the holder of the wine that it may be released and confirm this in writing or by email.

In some cases, wine may be released in batches over time as corrective action is taken. In such event, the Inspector must indicate in writing his or her agreement to the release and specify the quantities and types of wine that the approval relates to.

The Inspector must notify any other parties originally advised of the temporary movement control that the matter has been resolved.

The Inspector must complete a visit (or non-visit) report detailing the steps taken to ensure compliance and leading to the withdrawal of the control and shall record the date the TMC closed on the database.

### **3.4.11 Escalation procedure**

In some cases, an Inspector may choose to escalate a temporary movement control to a Prohibition Notice. See Chapter 9 on 'Forms' for 'WS ENF 1 / 2'.

The reasons for this might be:

- the FBO refuses to agree to a temporary movement control
- the Inspector receives information confirming that there is a serious problem with the wine
- the Inspector suspects that the owner of the wine may attempt to remove it or interfere with it before investigations are completed or before corrective action can be taken

- the person in control of the wine (the bond manager) asks for more formal action to be taken to protect their position as an intermediary

In such cases, the Inspector shall follow the procedure outline below and reflect the change of status in the visit report.

### 3.4.12 Prohibition notice

An Inspector is empowered 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 a failure to comply with wine legislation.

As indicated above, this is a serious power that should only be used in appropriate situations. A consistent procedure must be followed, prior to the issue of a Prohibition Notice. See Chapter 9 on 'Forms' for 'WS ENF 1 / 2'.

Other than in the case of a previously established illegal wine product, the Inspector must attempt to consult the Technical Inspector / HOD prior to serving a Prohibition Notice. In the event of the Technical Inspector / HOD being unavailable, the Inspector should use their professional judgement when issuing the notice and inform the Technical Inspector / HOD at the earliest opportunity.

If practical, inspectors are strongly advised to consult with the Technical Inspector and / or Legal team in respect of the wording on the Prohibition Notice to avoid potentially having to withdraw and reissue the notice.

### 3.4.13 Prohibition notice procedure

An Inspector must be satisfied that one (or more) of the following conditions is met before serving a Prohibition Notice:

- there is reason to believe that an offence has been committed, is being committed or is likely to be committed
- the matter is serious, as indicated earlier in this procedure document and as outlined in annex 10 on 'Infringement matrix still wine and / or annex 11 on 'Infringement notice sparkling wine'
- there is a potential risk that the wine might be moved or interfered with before any investigations can be completed or any corrective action can be taken
- there is a suspicion regarding the integrity of the FBO owning the wine or on the part of others involved in the supply chain

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- alternative actions are not likely to be sufficient to control the situation

The Inspector must:

- obtain the name and address of the owners of the product or those other than the warehouse keeper who have control of the product
- ascertain the nature of the infringement(s)
- obtain a full description and the quantity of the product
- where possible, obtain the details regarding the origin and movement to the current location
- ascertain whether similar stock is held elsewhere and details of any prior distribution to other wholesalers or retail outlets
- obtain / copy documentation regarding the movement of the product and product authentication
- obtain the reference number for the product, particularly the bonded warehouse rotation number
- obtain photographic evidence of the products subject to the Prohibition Notice, showing detention markings and the attached Prohibition Notice
- if prior approval to the service of a notice was not obtained from the Technical Inspector and / or HOD, notify either party as soon as practicable after the event

The Prohibition Notice must state:

- a unique reference number in this format

PN	Ref	WSA number	Date	Insp initials
PN	01	5555	01/03/16	BS
PN	02	5555	01/03/16	BS
PN	03	5555	01/03/16	BS

The first example case would have the unique reference number  
PN/01/5555/01/02/15/BS

- the name of the person who appears to be in control of the product
- the address at which the wine sector product is located
- a description of the wine sector products and quantities subject to the notice

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- details of the community legislation provisions the product is alleged to contravene

The product packaging is to be clearly identified by applying red and white detention tape available from BSU and where practicable copies of the Prohibition Notices.

- where acting in lieu of another Inspector (for example, following transfer of goods), verify that the product is as described by the other Inspector and matches the description and quantities stated in the Prohibition Notice
- record and investigate any discrepancies with a view to possible legal proceedings; and also notify the Technical Inspector and / or HOD and the Inspector that served the original notice
- serve the original of the Prohibition Notice on the person in immediate control of the product and / or the owner of the product, containing full details of the infringement(s) and other relevant information; a copy should also be sent via Royal Mail and a proof of postage certificate obtained
- address the notice and Prohibition Notice covering letter (see annex 13) to the Registered office and send via Royal Mail; if the notice is served after a visit, a proof of postage certificate must be obtained and kept by the Inspector along with a copy of the original notice; the Inspector must also return to the premises as soon as practical to hand deliver a copy of the notice
- fix the red / white detention tape to the product to identify that it is detained; a copy of the Prohibition Notice must be attached as soon as practicable, and photographs of the detained stock showing the tape and attached notice must be obtained
- arrange for the warehouse keeper and owner to be made aware of the issue of the Prohibition Notice and of the appeal and complaints procedure
- ensure, as far as possible, that the warehouse keeper and the owner of the goods are informed that it is a criminal offence not to comply with the terms of the notice and that a prosecution is likely to follow if they do not comply; ideally the Inspector should try to get written confirmation of this by asking them to sign in their notebook or on a VAD or by getting email confirmation
- follow the procedure outlined under the heading 'Consent to Movement' where, in certain circumstances, the FBO wishes to move stock subject to a Prohibition Notice to alternative premises
- securely retain all Prohibition Notice correspondence and other relevant documentation, particularly in circumstances where further investigations and / or formal proceedings are likely

- record all the details in a visit report and indicate the date of service on the database; copies of the notice and any photographs, supporting documentation and notes must be placed within the relevant FBO file on Wisdom

### 3.4.14 Monitoring

Having served a Prohibition Notice, an Inspector must instigate regular monitoring to ensure that no action is taken without the Inspector's knowledge or approval. The stock must be physically checked in situation a **minimum** of once every three months for the first six months (two visits). These checks can form part of the routine targeted risk assessment visit.

Additional visits after this time are at the Inspector's discretion and must consist of physical checks and documented remote monitoring. The **maximum** duration between physical inspections of stock held on a Prohibition Notice must be no more than **six months**.

When determining the frequency of physical visits to monitor stock held on a Prohibition Notice, consideration must be given to the food safety implications of the stock held on the notice and the confidence held in the management and trader of the location at which the stock is held.

Where the Inspector has no knowledge of the trader and / or believes that there may be concerns relating to the food safety of the stock, physical monitoring visits may be made weekly, or as frequently as the Inspector deems necessary, up to a maximum of one visit every three months.

Products stored at recognised bonded warehouses where a good working relationship exists between the Inspector and the bond manager may need less monitoring than at an FBO's own premises.

### 3.4.15 Consent to movement

In some circumstances, the FBO may wish to move stock subject to a Prohibition Notice to alternative premises. The reasons for this request may include the need to consolidate all affected stock in one place prior to corrective action, export or destruction.

Inspectors should not unreasonably refuse such requests but must be satisfied that the reasons for the request appear genuine and that the product will not go astray or be tampered with during the movement process.

No movement of a prohibited product may take place without written authorisation by an Inspector.

Where a request for the movement of a product from the location named in the Prohibition Notice to another location is approved a written Consent movement letter must be issued (see annex 15 on 'Stock movement authorisation letter').

The decision to agree to the movement is generally made at the discretion of the Inspector who served the original Prohibition Notice. However, before agreeing to such a request, the Inspector must liaise with the relevant Inspector responsible for the premises to which the wine is to be moved.

The two (or more) Inspectors involved need to agree to the issue of the Consent to Movement and to the subsequent monitoring procedures.

The original Inspector who served the Prohibition Notice will seek approval from the Technical Inspector / HOD prior to allowing the goods to be moved.

The local Inspector responsible for the premises receiving the stock must verify the arrival of the stock at the new location. The verification process must include a check of the stock received. In particular, the Inspector must check the description, quantity and integrity of the stock.

The local Inspector is to ensure that the conditions of the Prohibition Notice are fully understood by the new keeper and / or owner of the product. Copies of the Prohibition Notice and the Consent to Movement must be supplied.

The local Inspector must instigate ongoing monitoring of the stock.

### **3.4.16 Refusal of a request for movement**

In some circumstances an Inspector may not wish to allow the goods to be moved, particularly if there are serious concerns about whether the product will be interfered with or misappropriated during the movement process.

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 stated on the reverse of issued notices.

### **3.4.17 Withdrawal or removal of a Prohibition Notice**

At some point, it may be necessary to withdraw a Prohibition Notice. Reasons for this may include:

- corrective action has been taken
- the product has, with the approval of the Inspector and HMRC, been exported outside the EC or it has been destroyed
- the Inspector has received new information confirming the authenticity or legality of the product
- a decision by an assessor to uphold an appeal by the FBO

Any decision to withdraw a Prohibition Notice must be agreed by the Technical Inspector / HOD. Provided the Technical Officer / HOD is satisfied that the Prohibition Notice is no longer warranted, the Inspector shall issue a Prohibition Notice withdrawal letter to the FBO and the person in control of the wine that the control is removed. See annex 14 on 'Prohibition Notice withdrawal template'.

### **3.4.18 Closure procedure**

Once an Inspector is satisfied that the matter has been resolved, they must notify the holder of the wine that it may be released and confirm this in writing or by email.

In some cases, wine may be released in batches over time as corrective action is taken. In such event, the Inspector must indicate in writing their agreement to the release and specify the quantities and types of wine that the approval relates to.

The Inspector must notify any other parties originally advised of the movement control that the matter has been resolved.

The Inspector must complete a visit (or non-visit) report detailing the steps taken to ensure compliance and leading to the withdrawal of the control and shall record on the database the date the Prohibition Notice was closed.

### **3.4.19 Appeals against notices**

The FSA has adopted a formal process for dealing with appeals by FBOs against notices served by Wine Inspectors.

When serving notices, Inspectors must draw to the attention of the FBO, and / or the person in control of a wine product, the appeal provisions stated on the reverse of the formal notices.

Any appeal will be dealt with in accordance with the procedure. Inspectors must ensure they act appropriately and maintain adequate records to justify their actions and those of the FSA at any such appeal.

### 3.4.20 Prosecution

Prosecution is generally regarded as a measure of last resort. However, in some situations a prosecution should be considered at the outset of an investigation. Prosecution may also be considered in parallel with other action such as the service of a Prohibition Notice.

The following criteria may provide suitable grounds for a prosecution to be considered:

- clear evidence of a breach of winemaking rules, particularly where a risk to public safety ensues
- clear and deliberate action by an FBO to break the rules regarding PDO or PGI descriptions and / or the use of protected terms (for example, marketing counterfeit wine)
- breach of an Enforcement Notice or a Prohibition Notice
- deliberate and repeated infringements by the FBO despite previous warnings being given

Inspectors must ensure that they collect and prepare evidence in accordance with FSA MOC requirements. Ideally such evidence, if gathered during a visit, should be corroborated by other individuals such as another Inspector, a LA or HMRC officer and / or by photographic evidence.

During the evidence gathering process, Inspectors must discuss the case with the Technical Inspector / HOD and FSA Legal.

Further investigations, including formal interviews with the FBO and / or other individuals under caution, may be undertaken by FSA Investigators along with the Inspector.

Inspectors must follow any guidance offered by FSA Legal Enforcement Adviser and / or the FSA Investigation team.

Ultimately, it will be for FSA legal to decide if there is sufficient evidence to warrant a prosecution.

### **3.4.21 Access**

A warrant is only to be executed after consultation and agreement of procedure / support from FSA Enforcement Officer, HOD and WSB Technical Inspector.

Advise the local police of the intention to execute the warrant at a certain time and date. The establishment must be visited as soon as possible and, on production of the Warrant to Enter Premises, the occupier should grant access. If the occupier fails to grant access, he or she will be in breach of the warrant. Record the events in the contemporaneous notebook and inform the Technical Officer / HOD.

## 4. Annexes

### **Associated traders' documents**

Annex 1 Trader questionnaire

Annex 2a Trader discussions topics

Annex 2b Trader discussions topics: inspector answer sheet

Annex 3 Wine sampling aide memoire

### **Associated vineyard documents**

Annex 4 Vineyard questionnaire

Annex 5 UKVA label guidance

Annex 6 Refractometer guidance

Annex 7 Grape sampling request letter

Annex 8 Grape sampling questionnaire

Annex 9 Grape sampling submission document

### **Associated enforcement documents**

Annex 10 Infringement matrix still wine

Annex 11 Infringement notice sparkling wine

Annex 12 Visit advice document

Annex 13 Prohibition Notice covering letter

Annex 14 Prohibition Notice withdrawal template

Annex 15 Stock movement authorisation letter template

Annex 16 5x5x5 Information intelligence report

### Other

Annex 17      Sample Despatch Process