



Due diligence guidance for wine traders

June 2016

This guidance follows the Government Code of Practice on Guidance. If you believe this guidance breaches the Code for any reason, please let us know by emailing betterregulation@foodstandards.gsi.gov.uk

For any technical queries relating to this guidance please contact your Regional Wine Inspector whose details can be found at <http://www.food.gov.uk/business-industry/winestandards/contactinspectors>

If you have any comments on the guidance itself please email winestandards@foodstandards.gsi.gov.uk

Alternative formats

If you require this information in an alternative format such as audio, large print or Braille, please telephone the FSA Helpline on 020 7276 8829 or email helpline@foodstandards.gsi.gov.uk

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Intended audience

Intended audience:	Importers, wholesalers and UK wine producers
Which UK nations does this cover?	All UK nations
Purpose:	This document identifies steps which traders may take to demonstrate due diligence to comply with wine regulations
Legal status:	Business guidance
Key words	Wine, due diligence,
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Revision history

Revision No.	Revision date	Revision	Revised by
1	June 2016	Update to contact details and legislation	Graham Finch

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Introduction

1. As a trader, and particularly if you bring wine into the UK from other countries, you are responsible for the authenticity, quality and labelling of the wine that you sell.

The wine sector is extremely competitive and because of high UK excise duty there is always the risk that unscrupulous suppliers will try to sell illegal and/or duty evaded products to unwitting traders. For example, there have been many incidents of invented brands of counterfeit “Champagne” and/or still wines which are fraudulently described, being offered cheaply to unwary traders.

In addition, some third countries may allow winemaking practices including the use of additives that are not permitted within the EU e.g. use of Natamycin.

Traders selling such wine are breaking the law. The UK regulations provide for a defence of “due diligence” whereby a trader can argue that they took all reasonable and practicable steps to prevent the offence. Obviously, the extent to which the UK Courts would accept such a defence will depend on the nature/severity of the problem and what steps the trader actually took to prevent the offence.

The Agency’s Wine Inspectors try to seek compliance with the various wine regulations by providing advice and guidance to traders but occasionally formal action is needed. In all cases Inspectors try to act proportionately taking into account the nature of the problem and whether it has been caused negligently or, perhaps, in extreme cases, by deliberate criminal intent.

Our Inspectors will also take into account the robustness of any due diligence system in place, along with previous compliance history, when determining how often a business should be visited.

Whilst purchasing from a “reputable” or a “long established” supplier is always recommended this does not, in itself, constitute a due diligence defence.

Purpose of guidance

2. This guidance has been produced to help wine traders minimise the risk of problems that might affect their ability to sell their wine or which might result in

enforcement action being taken by Wine Inspectors. It suggests some basic steps (“due diligence”) that traders can take to prevent problems from occurring.

Apart from your responsibilities, both in law and to your customers, due diligence checks may also protect you by reducing the risk of you being a victim of an unscrupulous supplier. Such checks can help you to protect your reputation and to minimise the cost and inconvenience of rectifying genuine mistakes.

The guidance notes cannot cover every situation and you may need to consider the relevant legislation itself to see how it applies in your own circumstances. Businesses with specific queries may wish to seek the advice of their local Wine Standards Inspector.

Legal status of guidance

3. These guidance notes have no direct legal status and you are not required by law to follow this advice. However, if you follow the guidance notes they will help you to comply with the law.

Risks of not observing due diligence

4. As an example, if you have not checked the wine and the documentation prior to selling it you will have difficulty persuading the Courts or your customers that you have exercised “due diligence” if the wine is unsafe, has a fault or it is falsely described or wrongly labelled.

Some problems might not lead to prosecution or private litigation but they could result in your wine being subject to movement controls, with associated storage costs, until investigation or corrective action takes place.

In some cases no corrective action may be possible and you might need to destroy the product, which in itself is a costly process.

Failure to supply goods on time, either as a result of movement controls or the time taken to rectify problems, could severely damage your reputation and cause serious financial problems for you and your customers. In extreme cases you could lose customers, face criminal proceedings or private litigation and/or be forced to cease trading.

Recommended steps

5. Firstly, we recommend that you have a written “due diligence” policy and use a structured checklist. Our Inspectors will wish to discuss this with you when they visit and particularly if they find infringements.

Many food business proprietors will be familiar with the requirement to have an Hazard Analysis Critical Control Point Plan (HACCP) for identifying and controlling potential food safety hazards. Similar principles can be applied to the wine supply chain and be used to prepare a due diligence procedure to identify and then prevent or minimise the risk of problems from occurring.

For example, there are key stages in the production and supply chain where problems can arise either accidentally or by deliberate intent. To some extent the risks will depend on the nature of the product and the honesty and reliability of the producer and/or supplier.

However, identifying what could go wrong at these different stages will help you formulate a due diligence procedure and checklist.

Secondly, you should follow the policy and record what checks you have made together with any follow up action that was taken if a problem was identified.

The steps you need to take will vary depending on the nature of the risk and the quantities of wine involved.

Some “checks” can be simple and may already be being done as part of your normal business. For example, samples of wine are often shown to and tasted with prospective customers. Keeping notes of the wines tasted and the outcome can contribute to a due diligence system. Simply saying “we regularly taste our wines” without any further evidence to substantiate which wines were tasted and when or where etc. might not convince the Courts as much as documented evidence.

Larger companies

6. Not surprisingly larger companies importing or selling large quantities of wine will have more comprehensive quality control and due diligence systems in place.

For example they may:

A - Initially:-

- Agree a wine specification, (preferably in writing as part of a formal contract) including labelling, especially for own label wines or for large quantities of wine imported in bulk,
- Visit the winery\producer before agreeing to buy wine from them, to see first hand what standards they adopt and whether they have their own quality control and due diligence procedures in place
- Commission an audit of the producer\supplier or ask the producer to supply them with copies of audits that have been carried out and to provide copies of their quality control or due diligence procedures. This may mean compliance with internationally recognised quality schemes.
- Study the procedures to satisfy themselves that they are adequate

and

B - Subsequently:-

- Obtain pre shipment samples of wine for tasting and analysis, especially at vintage changes
- Check shipments as they arrive and make sure that the product is what they have ordered and that the shipping\importation documents or invoices correctly identify the wine and match the consignment
- Check the labelling to see that it matches information on the shipping\importation documents and complies with the EU labelling regulations.
- Take random samples from each shipment to taste them to ensure the wine is sound and of the standard expected
- Take random samples for analysis, often in their own laboratories but also at independent accredited laboratories.

Smaller businesses

7. The same principles apply to small businesses although it may not be practicable for the smaller trader to go to the same lengths as larger companies who may employ their own quality assurance staff and operate their own laboratories.

However, It is still possible for smaller traders to carry out and record some

basic checks. For example:-

- have I agreed what will be sent to me – do I have written supporting documents
- am I familiar with the wine and have I tasted it – do I have supporting records
- can I trust the supplier\producer to send me the correct product – how do I check
- for third country wines, do I have written confirmation from the producer or importer that they meet EU production requirements,
- how do I check new suppliers and \ or “special” offers are genuine
- am I satisfied with the security and storage arrangements if wine is stored elsewhere – is there risk of substitution or spoilage
- have I obtained and checked the documents for each shipment or purchase, for example, to ensure the alcohol analysis on shipping documentation is within legal tolerance allowed under EU Regulations
- have I checked the labels at each initial shipment and/or at each vintage change to ensure, for example, that protected terms are not incorrectly used, to see if allergen advice is correctly shown and to make sure that correct traceability information shown.
- have I got a system for recording and investigating complaints that might indicate a more widespread problem. (see para 8 below)
- have I periodically sent a sample to a specialist laboratory for analysis, especially for new lines and\ or at a vintage change
- have I got good stock rotation
- have I recorded the dates and details of the checks that I have made

If you find a problem

8. Firstly identify and list all of the wine affected, usually via the Lot number, and isolate it until you resolve the problem. The action you then take will depend on the nature and severity of the problem. You can always seek advice from your local Wine Standards Inspector who will advise you as to what corrective action may be possible to resolve the problem.

If the problem appears serious you will need to contact your customers and ask them to check the wine, and if necessary, get them to return it to you. You will also need to advise your supplier so they can check their supplies, investigate the cause and prevent any further deliveries from taking place.

In the case of a major problem you should also contact the Food Standards

Incidents Unit via the FSA website

<http://www.food.gov.uk/foodindustry/incidents/report/>

More detailed guidance

9. More detailed guidance on the legislation regarding documentation, labelling and checking wine can be found on our website

<http://www.food.gov.uk/wine>

Review

10. The guidance will be reviewed in June 2018. If you wish to give comments on this guidance please email winestandards@foodstandards.gsi.gov.uk