

Scotch Whisky Association

THE SCOTCH WHISKY REGULATIONS 2009

2/12/2009

Guidance for Producers and Bottlers

The **Scotch Whisky Regulations 2009 (SWR)** came into force on 23 November 2009*. They replaced the Scotch Whisky Act 1988 and the Scotch Whisky Order 1990. Whereas the previous legislation had only governed the way in which Scotch Whisky must be produced, the SWR also set out rules on how Scotch Whiskies must be labelled, packaged and advertised, as well as requiring Single Malt Scotch Whisky to be bottled in Scotland from 2012.

The following guidance is aimed at assisting those producing and selling Scotch Whisky, and those designing labels, packaging and advertising, to comply with the new law. Checklists are included where appropriate. This guidance covers only the main provisions of the law; the Regulations should be referred to for the full detail. The SWA's Legal Department is ready to assist with any questions. Contact details are provided at the end of this Guidance.

*(subject to certain transitional provisions).

Guidance:

1. Production of Scotch Whisky	2
2. Definitions of Categories of Scotch Whisky	3
3. The only type of whisky which may be produced in Scotland is Scotch Whisky	4
4. Passing Off	4
5. Export of Scotch Whisky in bulk	4
6. Labelling of Scotch Whisky	4
7. Distillery Names	5
8. Locality and regional geographical indications	7
9. Prohibition of the description "pure malt"	8
10. Maturation, age and distillation statements	8
11. Transitional periods regarding labelling, packaging and advertising	9
12. Verification of the authenticity of Scotch Whisky	9
13. Enforcement	9
14. Legal Affairs Department contact details.	10

1. Production of Scotch Whisky

- 1.1 The SWR do not change the way that Scotch Whisky is produced. **Regulation 3(1)** sets out the production method for Scotch Whisky.
- 1.2 As regards maturation, one area of possible ambiguity has been addressed. The SWR make clear that Scotch Whisky must be wholly matured in Scotland, i.e. it may not be matured in any country other than Scotland.
- 1.3 The SWR also require that all maturation must take place in an excise warehouse or in another “permitted place” regulated by Her Majesty’s Revenue & Customs (HMRC).

“Permitted place” is defined in **Regulation 4** and includes any place to which spirits in an excise warehouse are moved for:-

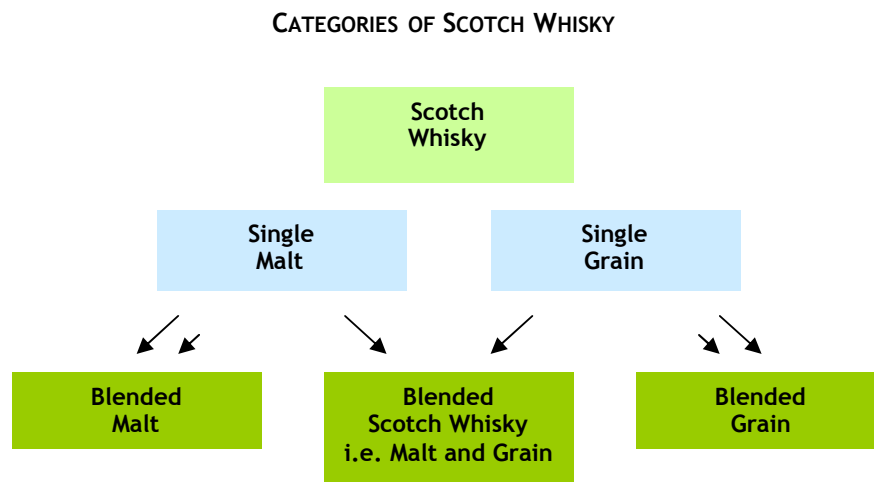
- Re-warehousing in another excise warehouse
- Such temporary purposes and periods as HMRC may allow
- Scientific research and testing
- Storage at other premises where, under the Customs and Excise Acts, goods of the same class or description may be kept without payment of excise duty
- Such other purpose as HMRC may permit

It is only if all maturation of Scotch Whisky takes place under some form of HMRC control that they will be able to certify that the spirit is Scotch Whisky and, if an age is claimed, that the Scotch Whisky has been matured in the permitted size of oak casks for the period claimed.

- 1.4 Whereas the Scotch Whisky Order 1990 permitted the use of “spirit caramel”, the SWR permit only the use of “plain caramel colouring”. This is simply a change of terminology to align with EU regulations. The type of caramel colouring which is permitted for Scotch Whisky remains the same, namely E150A.

2. Definitions of categories of Scotch Whisky

2.1 **Regulation 3(2)** contains the definitions of the different categories of Scotch Whisky.



2.2 The two basic types of Scotch Whisky, from which all blends are made, are Single Malt Scotch Whisky and Single Grain Scotch Whisky. In practice there is no change in the way that Single Malt Scotch Whisky and Single Grain Scotch Whisky must be produced.

2.3 **Single Malt Scotch Whisky** means a Scotch Whisky produced from only water and malted barley at a single distillery by batch distillation in pot stills.

2.4 **Single Grain Scotch Whisky** means a Scotch Whisky distilled at a single distillery but which, in addition to water and malted barley, may also be produced from whole grains of other malted or unmalted cereals. Excluded from the definition of “Single Grain Scotch Whisky” is any spirit which qualifies as a Single Malt Scotch Whisky or as a Blended Scotch Whisky. The latter exclusion is to ensure that a Blended Scotch Whisky produced from Single Malt(s) and Single Grain(s) distilled at the same distillery does not also qualify as Single Grain Scotch Whisky.

2.5 The definition of **Blended Scotch Whisky** does change the existing law, but reflects traditional and current practice. Before the SWR, any combination of Scotch Whiskies qualified as a Blended Scotch Whisky, including for example a blend of Single Malt Scotch Whiskies. However, Blended Scotch Whisky is defined under the SWR as a combination of one or more Single Malt Scotch Whiskies with one or more Single Grain Scotch Whiskies, which accords with traditional practice.

2.6 **Blended Malt Scotch Whisky** means a blend of two or more Single Malt Scotch Whiskies from different distilleries, and

2.7 **Blended Grain Scotch Whisky** means a blend of two or more Single Grain Scotch Whiskies from different distilleries.

3. The only type of whisky which may be produced in Scotland is Scotch Whisky

- 3.1 As was the case under the Scotch Whisky Act 1988, **Regulation 5** stipulates that the only whisky which may be manufactured in Scotland is Scotch Whisky. The definition of “manufacture” is found at **Regulation 4**.
- 3.2 The purpose of this provision is to prevent the existence of two ‘grades’ of whisky originating from Scotland, one “Scotch Whisky”, and the other “whisky - product of Scotland” which complies with the generic standard for whisky under **EC Regulation 110/2008***. The existence of two such ‘grades’ of whisky produced in Scotland would make it extremely difficult to protect Scotch Whisky as a distinctive product.
- 3.3 In addition to prohibiting the production of whisky in Scotland other than Scotch Whisky, it is also prohibited to mature or to blend whiskies in Scotland other than Scotch Whisky. This is to prevent use of descriptions such as “whisky - matured in Scotland” or “whisky - blended in Scotland” on spirits which are not Scotch Whisky. Again, this will help to ensure that “Scotch Whisky” remains a distinctive product.

*(see paragraph 2 at Annex II).

4. Passing Off

Regulation 6 makes it illegal to label, package, sell or advertise any drink as “Scotch Whisky” or “Scotch” or in such a way as to suggest indirectly that the drink is Scotch Whisky, when it does not qualify as such.

5. Export of Scotch Whisky in bulk

- 5.1 As it is illegal to mature Scotch Whisky outside Scotland, **Regulation 7** also makes it illegal with immediate effect (as from 23 November 2009) to export any type of Scotch Whisky in an oak or other wooden cask. It is permitted to continue to export Scotch Whisky in bulk using inert containers such as appropriate plastic drums or steel containers.
- 5.2 However, Regulation 7 makes it illegal as from 23 November 2012 for Single Malt Scotch Whisky to be exported from Scotland other than in a bottle labelled for retail sale.

6. Labelling of Scotch Whisky

For the first time the SWR introduced specific requirements for the labelling of Scotch Whiskies. It is an offence not to comply with these requirements.

6. Labelling of Scotch Whisky (contd)

- 6.1 **Regulation 8** makes it compulsory for every Scotch Whisky to bear on the front of the bottle, and also on any individual packaging, the category to which that Scotch Whisky belongs, i.e. “Single Malt Scotch Whisky”, “Single Grain Scotch Whisky”, “Blended Scotch Whisky”, “Blended Malt Scotch Whisky” or “Blended Grain Scotch Whisky”. It is required that the category description appears on the presentation of every Scotch Whisky so it is clear it is the sales description. The category description must be as prominent as any other description of the whisky on the labels or packaging, and there are further provisions relating to how the category description must appear.
- 6.2 The only word (or words) which may be added to the category description is the name of the Scottish locality or region in which the Scotch Whisky was distilled. In other words, the description “Single Malt Scotch Whisky” must appear in exactly that form, except that it can be preceded by a description such as “Speyside” or “Islay”, if that Single Malt Scotch Whisky has been entirely distilled in that specified locality or region. For rules regarding the use of locality or regional names, see **Locality and regional geographical indications**.
- 6.3 To assist designers of labels and packaging, here is a basic **checklist** on labelling requirements as regards category descriptions.
- 6.4 It is an offence to advertise or promote a Scotch Whisky as belonging to a category to which it does not belong.
- 6.5 There are **transitional periods** before the provisions covering labelling and advertising come into force.

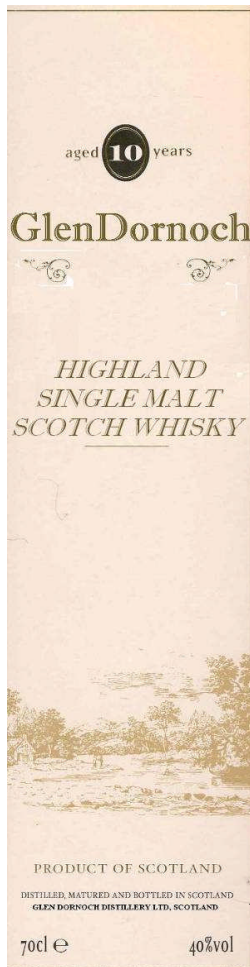
7. Distillery Names

Regulation 9 and **Schedules 1** and **2** cover the use of distillery names.

- 7.1 Regulation 9(1) makes it illegal to use as a brand name (or as part of a brand name) for a Scotch Whisky the name of any distillery listed at Schedule 1 unless the Scotch Whisky has been wholly distilled at that distillery. A similar provision applies to Scotch Whisky distilleries opened or reopened in the future (Regulation 9(2)).
- 7.2 Regulation 9(4) also makes it illegal to label, package, advertise or promote any Scotch Whisky in a way which is likely to deceive the public into thinking it has been distilled at any distillery other than the true distillery.
- 7.3 Regulation 9(5) makes it illegal to label, package, advertise and promote Single Malt Scotch Whisky or Single Grain Scotch Whisky in a way which is likely to deceive the public as to the identity of the distiller.

7. Distillery Names (contd)

- 7.4 These provisions were introduced because complaints had been received from consumers who had bought a Single Malt Scotch Whisky sold under a brand name which they had understood to be the name of the distillery, which they later found was not the case. A fictitious example might be a Single Malt Scotch Whisky sold under the name **GLEN DORNOCH**. Because the names of many Scotch Whisky distilleries include the word “Glen”, and consist of geographical names, consumers might believe that the Single Malt Scotch Whisky had been distilled at Glen Dornoch Distillery, which does not exist.



Glen Dornoch Distillery Ltd

- 7.5 The risk of deception would be even greater if the labelling of GLEN DORNOCH Single Malt Scotch Whisky featured a company or trading name such as “Glen Dornoch Distillery Ltd”. That would reinforce the assumption by the consumer that the Scotch Whisky came from Glen Dornoch Distillery.
- 7.6 The test under Regulations 9(4) and (5) is a subjective one. Each brand owner must assess whether there is any risk that consumers may buy his Scotch Whisky in the belief that it comes from a distillery, or a distiller, other than the true one. If such a risk does exist, the brand owner should take corrective action. There are various ways in which the risk of deception can be avoided. For example:-
- the most obvious way is to avoid the use of brand names, and company or trading names, which may be taken by consumers to be the name of a distillery (when they are not)

7. Distillery Names (contd)

- if a brand owner has an existing, well established, brand which falls into the ‘danger’ category, one way of preventing any confusion would be to state clearly on the label and packaging the name of the distillery where the Single Malt Scotch Whisky or Single Grain Scotch Whisky was actually distilled
- it may be possible to amend names which fall into the ‘danger’ category to remove the risk of confusion. For example, if a Single Malt is being sold under the name DORNOCH, which might be seen to be the name of a distillery, the name could be changed to DORNOCH CASTLE which would be less likely to be seen as the name of a distillery.

It should be stressed that this is simply guidance on the SWR. It is up to each brand owner to make his own judgment as to how to avoid confusing consumers and breaching the Regulations. If in doubt, you can contact the SWA’s Legal Department.

8. Locality and regional geographical indications

8.1 **Regulation 10** covers the use of locality and regional names.

It has long been customary to sell Single Malt Scotch Whiskies accompanied by a locality or regional geographical name to indicate where they were distilled. In order to protect and promote these names, the SWR define the five major traditional locality and regional geographical indications, which are “Highland”, “Lowland”, “Speyside”, “Islay” and “Campbeltown”. These names may be used on labels and packaging, preceding the compulsory category description, if the Scotch Whisky has been wholly distilled in the relevant locality or region, i.e. a Single Malt Scotch Whisky distilled in the Speyside region may be described on the label and carton as “Speyside Single Malt Scotch Whisky” (the words to appear in exactly that order). The names may also appear separately from the category description as long as they are no more prominent than that description.

8.2 The boundaries of the five protected localities and regions are set out in Regulation 10. **Schedule 3** explains where Regulation 10(1) does not apply.

8.3 It should be noted that:-

- although only the five traditional localities and regions have been defined and protected in the SWR, it is still permitted to use, in exactly the same way, another Scottish locality or regional name as long as the Scotch Whisky was entirely distilled in that place. For example, Single Malt Scotch Whiskies distilled in Orkney may be sold described as “Orkney Single Malt Scotch Whisky” (with the words appearing in exactly that order) .
- Speyside falls within the borders of the Highland region and therefore Scotch Whiskies distilled in the Speyside area may either be described as “Highland” or as “Speyside”.
- it is illegal to use a locality or regional geographical name in relation to a Scotch Whisky which has not been distilled in the locality or region in question. There are, however, certain exceptions to this rule -

8. Locality and regional geographical indications

- ◆ this rule does not apply where the name of the protected locality or region forms part of a trade mark or company name registered before 1 September 2009, and is only included in the presentation of the Scotch Whisky as part of that trade mark or company name - e.g. “HIGHLAND QUEEN Scotch Whisky” or “Highland Distillers Ltd”.
- ◆ it is permitted on the labelling of any of the three types of blends of Scotch Whisky to refer to the localities or regions in which the Scotch Whiskies in the blend were distilled as long as all the relevant localities or regions are specified. For example on a “Blended Malt Scotch Whisky” an additional description might appear such as “a Blend of Highland and Islay malts”.
- ◆ it is also permitted that, if a brand owner has a ‘stable’ of brands, which include Single Malt Scotch Whiskies from a variety of regions, the brand owner might, for example, refer on the labelling of his Highland Single Malt Scotch Whisky that it belongs to the same ‘stable’ as his Single Malt Scotch Whisky from the Islay region.

9. Prohibition of the description "Pure Malt"

Regulation 11 bans the use of the term “Pure Malt”

Because of concerns that consumers were confused by the description “Pure Malt”, that description (and derivations of it) are prohibited in the labelling, packaging, advertising or promotion of any Scotch Whisky. The prohibition relates only to the combination of the words “pure” and “malt” (and derivations such as “Purest Malt”) and does not prevent, for example, a reference in promotional literature to the use of “pure water”.

10. Maturation, age and distillation statements

Regulation 12 regulates maturation, age and distillation statements.

- 10.1 The SWR maintain the longstanding rule regarding the use of age statements, namely that the only age which may be stated in the labelling, packaging or advertising of a Scotch Whisky is the age of the youngest Scotch Whisky in the product. In other words, if a Scotch Whisky contains a blend of 8, 12, and 15 year old Scotch Whiskies, the only age claim which may be made for that product is “8 years old”. (Similar statements such as “aged 8 years” may also be used, as long as the stated age is in years).
- 10.2 The SWR lay down new rules regarding the use of distillation or vintage years, albeit reflecting previous good practice in the industry. The SWR require that if labelling and packaging or advertising refers to a distillation or vintage year:-
- only one year may be mentioned
 - all of the whisky in the product must have been distilled in that year
 - the presentation of the whisky must also feature the year of bottling or an age statement
 - the year of bottling or the age statement must appear in the same field of vision as the year of distillation or vintage.

10. Maturation, age and distillation statements

- 10.3 The use of other numbers, which do not relate to the age of the Scotch Whisky, should be treated with caution. If there is a likelihood that consumers believe that the number relates to the age of the product, when that is not the case, that will be an offence.

Here is a [checklist](#) regarding age statements and distillation years.

11. Transitional periods regarding labelling, packaging and advertising

[Regulations 13](#) and [14](#) provide for transitional periods regarding labelling, packaging and advertising.

- 11.1 Operators have two years to bring their labelling and packaging into compliance with the SWR. In other words, all labelling and packaging applied after 22 November 2011 must comply with all the new labelling rules. Scotch Whiskies labelled and packaged prior to 22 November 2011 may, however, be sold through the distribution chain until exhausted.
- 11.2 All advertising of Scotch Whiskies after 22 November 2011 must comply with all the new rules which cover advertising.
- 11.3 During these transitional periods, the labelling, packaging and advertising of Scotch Whiskies must comply with all existing laws, for example consumer protection laws and those governing age statements.

12. Verification of the authenticity of Scotch Whisky

[Regulation 15](#) appoints Her Majesty's Revenue and Customs (HMRC) as the competent authority for the verification of Scotch Whisky. HMRC will be responsible for ensuring compliance of Scotch Whisky with the SWR, both as regards production and labelling. The exact conduct of this verification process is still being discussed with the UK Government.

13. Enforcement

[Regulations 16 to 41](#) set out the full enforcement provisions. In summary:

- any enforcement action required will be taken by Trading Standards Officers (as regards sales within the UK) or by Port Health Authorities (as regards exports and any (re)imports).
- there is a range of enforcement measures from warning notices through to criminal prosecution. Which enforcement measure is taken will depend on the circumstances of the breach, but it is anticipated that in the case of unintentional or minor breaches the enforcement authorities will seek to resolve problems by discussion first.
- Provisions are also included allowing civil enforcement of the SWR by interested parties, including the SWA ([Regulation 40](#)).

Legal Department Contacts

The SWA's Legal Department is ready to assist with any questions arising out of the SWR. The relevant contact details are:

Glen Barclay

Email: gbarclay@swa.org.uk

Tel: 0131 222 9212

Magnus Cormack

Email: mcormack@swa.org.uk

Tel: 0131 222 9213

Kenny Gray

Email: kgray@swa.org.uk

Tel: 0131 222 9211

Lindesay Low

Email: llow@swa.org.uk

Tel: 0131 222 9258

Alan Park

Email: apark@swa.org.uk

Tel: 0131 222 9214

