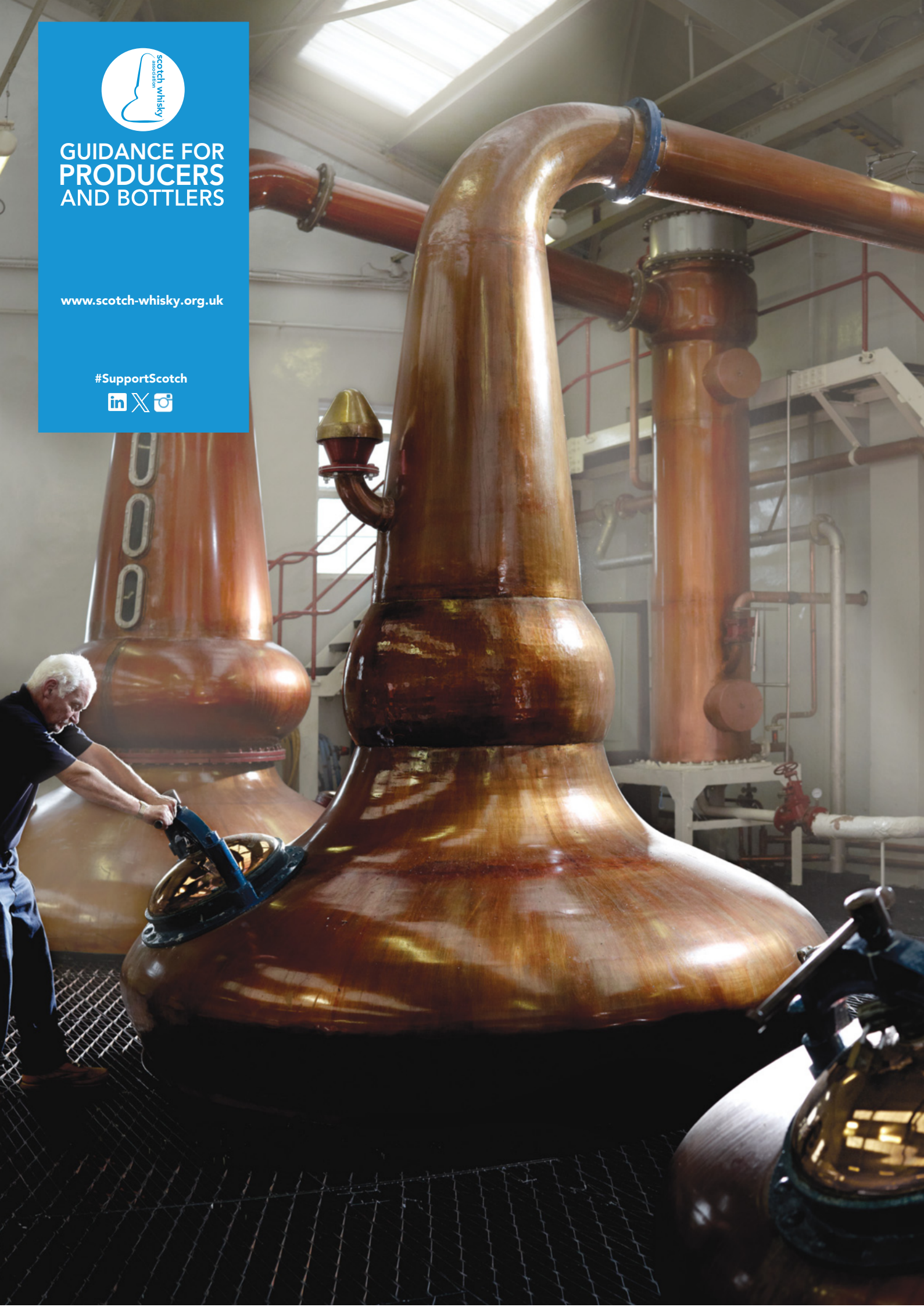




GUIDANCE FOR PRODUCERS AND BOTTLERS

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Guidance

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 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 Affairs team is ready to assist with any questions. Contact details are provided at the end of this Guidance.

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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:

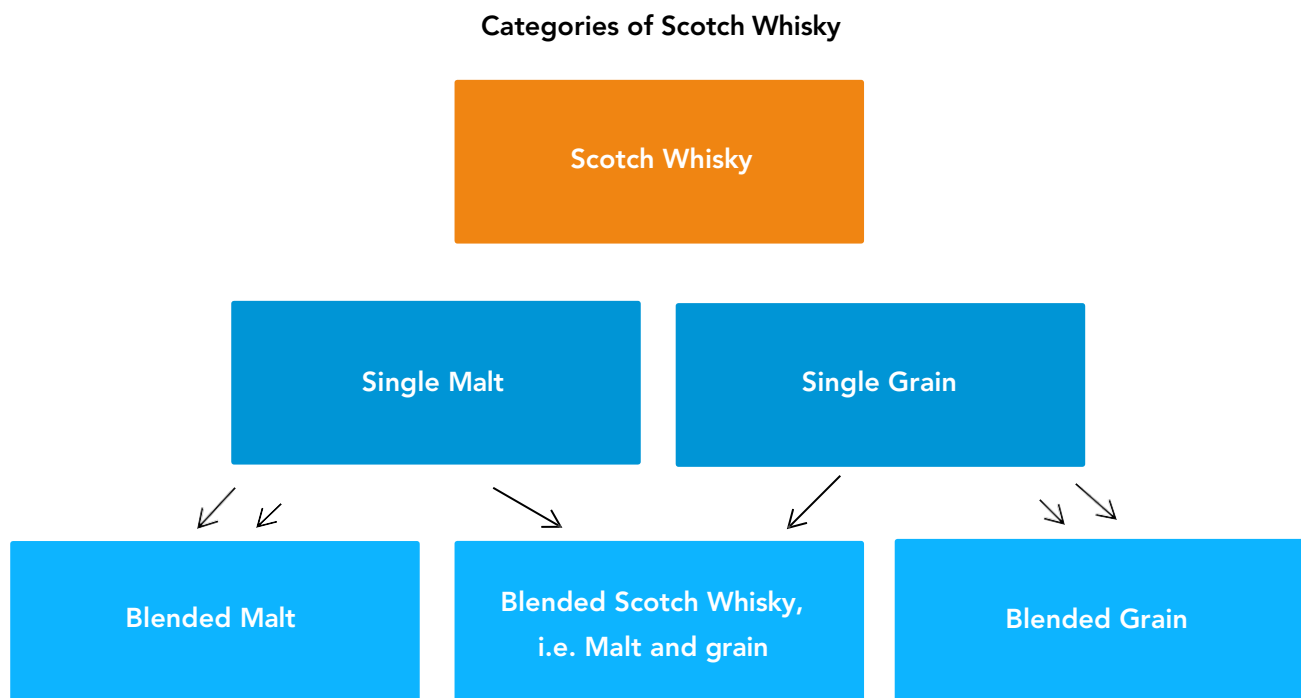
- Re-warehousing in another excise warehouse
- Such temporary purposes and periods as HMRC may allow
- Scientific research and testing
- Storage at other premises where, under the Customs and Excise Acts, goods of the same class or description may be kept without payment of excise duty
- Such other purpose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



2 Definitions of categories of 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 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 or a blend of new make malt distillates 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 **Regulation 110/2008** (see paragraph 2 at Annex II). 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.




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.

- 6.1 **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 specific 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.

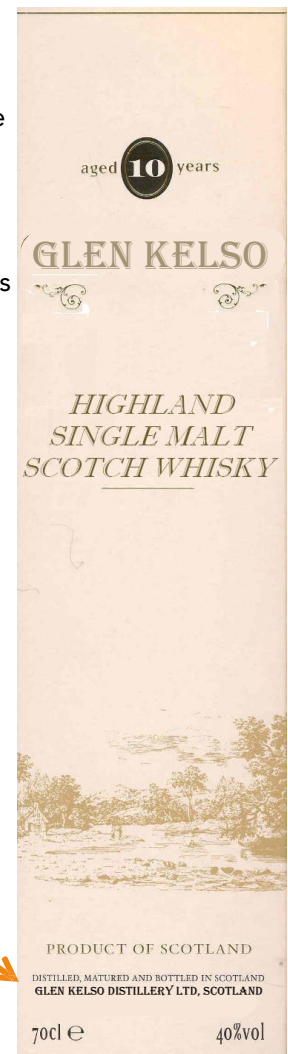
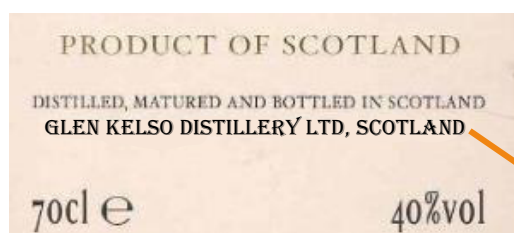


7. Distillery Names

Regulations 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.
- 7.4 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 KELSO. 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 Kelso Distillery, which does not exist.
- 7.5 The risk of deception would be even greater if the labelling of GLEN KELSO Single Malt Scotch Whisky featured a company or trading name such as "Glen Kelso Distillery Ltd". That would reinforce the assumption by the consumer that the Scotch Whisky came from Glen Kelso Distillery.

Glen Kelso Distillery Ltd





7 Distillery Names

7.6 The test under Regulations 9(4) and (5) is a subjective one. Each brand owner must assess where 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 name which may be taken by consumers to be the name of a distillery (when they are not)
- 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 KELSO, which might be seen to be the name of a distillery, the name could be changed to KELSO 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 judgement as to how to avoid confusing consumers and breaching the Regulations. If in doubt, you can contact the SWA's Legal Affairs team.



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".



8 Locality and regional geographical indications

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:
 - o 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”.
 - o 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”.
 - o 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 terms "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.
- 10.3 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 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 is responsible for ensuring compliance with the Technical File for Scotch Whisky, both in regards production and labelling. Further details about the verification process can be found in the UK Government's website [here](#).



12 Enforcement

Regulations 16 to 41 set out the full enforcement provisions. In summary:

- any enforcement action required will be taken by Trade Standard 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 prosecutions. 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**).

Contact the Legal Affairs team

The SWA's Legal Affairs team is ready to assist with any questions arising out of the SWR.

legal@swa.org.uk

Labelling Requirements in the Scotch Whisky Regulations 2009

Basic Checklist

1. Gather together all labelling and packaging for the brand. This should include any carton, and the closure if it bears any text. In this example there is no text on the closure and only a neck label, front label and back label to consider.



2. Determine the correct category name for the brand. In this case it is "Blended Malt Scotch Whisky".
3. Make a list of all other "descriptions of the whisky" appearing anywhere on the container or packaging. These are words which identify a characteristic or quality of the whisky. Working from top to bottom, the descriptions of the whisky appearing in this example, apart from the category name are:



(h) Rare



(i) Aged 12 years



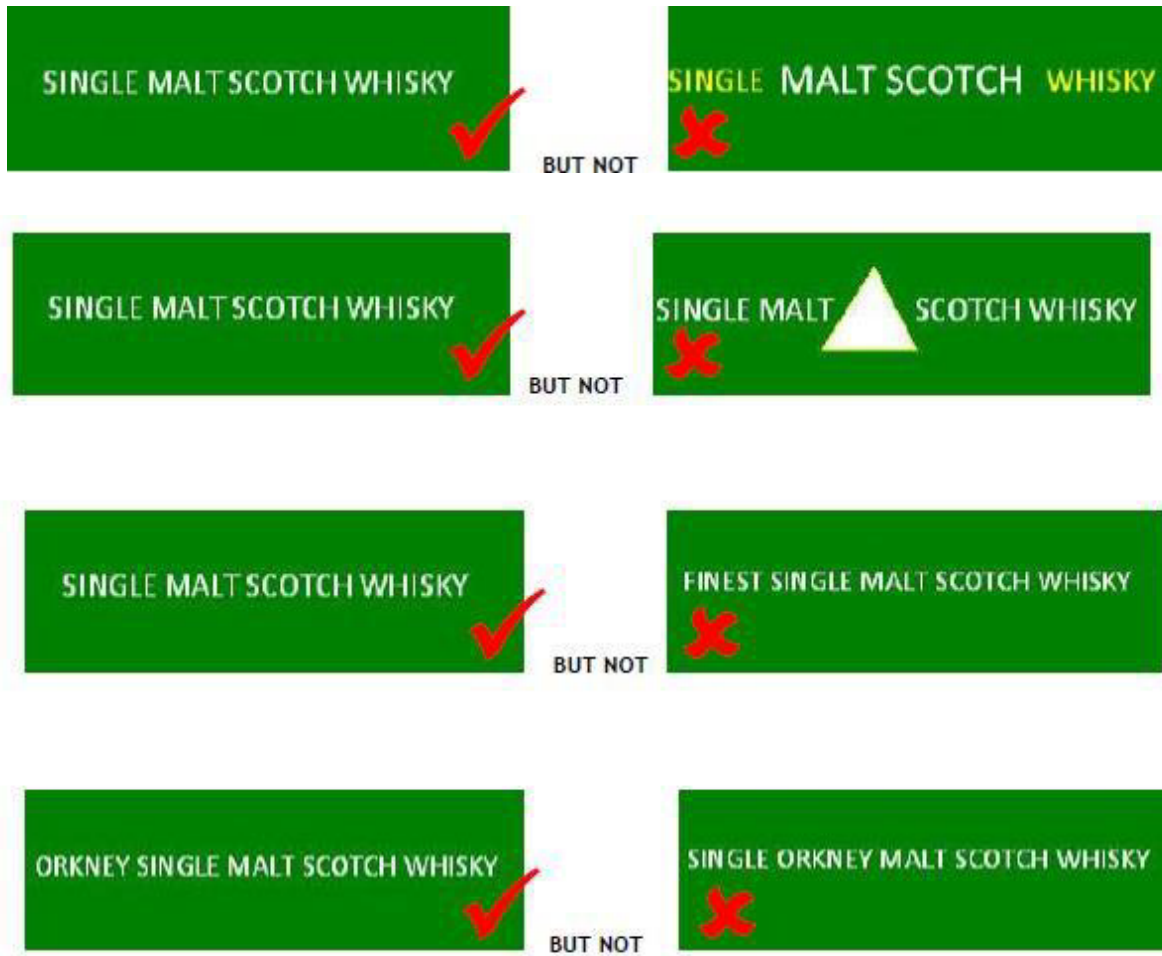
(j) Scotch Whisky



Note: The Royal warrant, the brand name (in this case "Fingal's"), the words "Edinburgh" and "Green Banner", the mandatory indications of volume and strength, the company name and address and the date the company was established, are not "descriptions of the whisky".

4. From the above list, ignore any descriptions which are specifically exempted [Regulation 8(3)(c)]. These are:
 - (a) any separate use of the description "Scotch Whisky". In this case, the words "Scotch Whisky" appear separately on the back label.
 - (b) any age statement – in this case, "Aged 12 Years" and "Twelve Years Old". Distillation and bottling dates would also qualify.
 - (c) Any descriptive word or words forming part of the brand name. In this case, the word "Rare". Whether such words, which are in normal course descriptive, form part of the brand name is a question which will be judged in the circumstances of each case. If in doubt, it is suggested that you contact the SWA legal team.
5. The descriptions you are left with are:
 - (a) De Luxe
 - (b) Choice Scotch Whiskies
 - (c) Blended and Bottled in Scotland
 - (d) Product of Scotland
6. Check that the category name ("Blended Malt Scotch Whisky") is as prominent as the descriptions in paragraph 5, irrespective of where they appear on the container and packaging.
7. In addition, check that the category name ("Blended Malt Scotch Whisky") is
 - (a) Printed on the front of the container and on the front of any individual carton.
 - (b) Printed in a conspicuous place in such a way as to be easily visible, legible to the naked eye, and indelible.
 - (c) Printed so that it appears clearly as the sales description of the whisky.
 - (d) Printed in a way that gives equal prominence to each word making up the name of the category.
 - (e) Not overlaid or interrupted by other written or pictorial matter.
 - (f) Not used in conjunction with any other words except for a Locality or Regional name in accordance with Regulation 8(5)

8. Examples of acceptable and unacceptable practice in relation to points 7(d), (e) and (f) are shown below:



Labelling Requirements in the Scotch Whisky Regulations 2009

Age Statement Checklist

1. Gather together all packaging, labelling and advertising for the brand. Check whether any reference to the maturation period or age of the whisky (or its constituent whiskies) is made. If so, check that:

- (a) The reference is only to the youngest whisky in the brand. Examples of **acceptable** age statements are:

"Aged 10 Years"

"12 Years Old"

"Over 10 Years Old"

Examples of statements that are **prohibited** are:

"aged five to ten years"

"minimum age 5 years: maximum age 10 years"

"The average age of the whiskies in the blend is ten years"

"Contains whiskies up to 60 years old"

"80% 10 year old; 20% 25 year old Scotch Whisky"

- (b) The maturation period or age is only expressed in years, and consists of one number only.

Examples of statements that are **prohibited** are:

"Aged 36 months"

"Aged 3 Years – 36 Months"

"Aged for 12 maturation cycles"

2. Check whether any reference is made to the distillation year of the whisky (or its constituent whiskies). If so, check that:

- (a) The reference relates to a **single** calendar year.

Examples of statements which are **prohibited** are:

"This 21 year old whisky contains whiskies distilled in 1960 and 1970"

"Distilled 1991 or earlier"

"Contains whiskies dating back to the 1950s"

- (b) All of the whisky was distilled in the single year mentioned.

- (c) Each reference to the distillation year appears in the same field of vision as one of the following:

The year of bottling, e.g. "Bottled 2009"



(This option should only be used where the spirit has spent the entire intervening period between distillation and bottling maturing in Scotland under revenue supervision in oak casks of a capacity not exceeding 700 litres),

or

The maturation period, e.g. "10 Years in cask" or the age of the whisky, e.g. "Aged 10 Years"



3. Other numerals or dates, or words referring to periods of time, should not be used on labels, packaging or advertising if they could be mistaken for an age statement or distillation date. Particular care should be taken where English is not widely understood and where consumers will therefore not understand the context in which a numeral appears. The use of any number (however expressed) which is likely to lead to confusion as to the age or date of distillation of a Scotch Whisky is **prohibited**.
4. Ensure that customers do not use inappropriate age statements in any material they produce. It is recommend that this be made a condition of contract, and that breach of this condition be treated as a material breach of contract.