
**MEMORANDUM OF UNDERSTANDING BETWEEN THE
COMMISSIONERS OF HM REVENUE & CUSTOMS AND BONDED
WAREHOUSEKEEPERS ASSOCIATION**

**MEMORANDUM OF UNDERSTANDING MADE THIS DAY OF
2006**

WHEREAS:

1. Objective

1.1 The purpose of this Memorandum of Understanding (“MOU”) is to set out a framework for co-operation between HM Revenue & Customs (“the Commissioners”) and the Bonded Warehousekeepers Association henceforth known as “BWA” and its members as set out at Annex 1 hereof on the date of signing hereof, and members from time to time to contribute towards the prevention and disruption of smuggling or diversion of alcoholic beverages onto the UK market without the payment of excise duty at the earliest opportunity.

1.2 It is recognised that where members are signatories to other similar anti-fraud MOUs then the MOU most appropriate to their business will take precedence.

2. Background

Alcohol smuggling and fraud cost HM Treasury significant lost revenue annually. The supply of illicit (duty-evaded) alcohol also damages the interests of law-abiding warehouse keepers and consequently the BWA and its individual members wish to further co-operate with the Commissioners to reduce the opportunities for alcohol fraud in the UK market. The BWA recognises that fraud takes place when goods are moving under duty suspension and that this can be achieved on movements out of the UK (Outward Diversion), on goods entering the UK (Inward Diversion) and when goods move between approved warehouses within the UK (Intra UK diversion). The BWA also recognizes the opportunities for fraud as a result of the REDS system and the Occasional Importers scheme. Accordingly:

2.1 Both the BWA and the Commissioners will work together to further promote good practice and mutual assistance including the formation of a Joint Warehouse Fraud Task Force (“JWFTF”): the terms of reference for which are set out at Annex 2 hereto;

2.2 The parties will apply and abide by this MOU within the constraints imposed by applicable legislation, including competition law, the Commissioners of Revenue and Customs Act, the Data Protection Act, the Criminal Procedure and Investigation Act, and the Regulation of Investigatory Powers Act. The Commissioners, the BWA and its individual members will respect the commercial confidentiality of information provided by each other subject always to any overriding applicable legal obligations.

3. The BWA and its members set out at Annex 1 hereto hereby agree that:

3.1 Member companies will take action where criteria defined within the attached Annexes 3, 4 and 5 are met. This will involve:

3.1.1. Notification of defined occurrences to the Commissioners;

3.1.2. The reviewing or cancelling of trading relationships with the customers concerned;

3.2 The BWA and the Commissioners will liaise and exchange information on fraud trends through at least twice yearly meetings of the JWFTF.

4. The Commissioners agree that consistent with their obligations of lawful disclosure:

4.1 They will impose, at the earliest opportunity, appropriate sanctions within the regulatory framework against those shown to be directly involved in the supply of illicit alcohol onto the UK market. The Commissioners will notify the BWA and its members signatory to this agreement (including the JWFTF) of the action taken *inter alia* so that the BWA member trading relationships can be reviewed as set out in 3.1.2 above;

4.2 To use their best endeavours to protect the commercial interests of the BWA members they will encourage and facilitate similar swift action against overseas warehousekeepers/traders who are involved in the supply of illicit products subject to excise duty into the UK market. This will include traders in other EU Member States and beyond by providing and requesting mutual assistance and mutual legal assistance as appropriate. The Commissioners will notify the legitimate UK trade of the action taken, through the JWFTF, as soon as reasonably practicable;

4.3 They will notify the BWA and its members of any major seizures involving goods allegedly consigned to or despatched from their warehouse and provide those members with as much information as possible about the circumstances and the nature of the seized stock;

4.4 They will provide feedback to the BWA and its members, in as timely manner as possible, on the outcome of all investigations with which they have assisted;

4.5 They will keep the legitimate UK trade informed of significant successes achieved by their anti-fraud enforcement activities and of any new anti-fraud policy measures/regulations through the JWFTF;

- 4.6 They will share information with the BWA and its members on the scale and nature of, and trends in, alcohol seizures and fraud to facilitate the generation of new joint anti-fraud measures;
- 4.7 They will provide the BWA and its members with as much information as possible to assist them to fulfil their commitments under Clause 3.1 hereof;
- 4.8 Pursuant to their normal assurance programme they will undertake to continually review guarantees and approvals and ensure that warehousekeepers and guarantee principals are made aware of their potential liabilities.

5. General Provisions

- 5.1 The Commissioners, will where appropriate, consult fully on new policies and techniques intended to curb alcohol fraud and seek to minimise their impact on the legitimate alcohol trade. The BWA and its members will participate fully and proactively in consultations on the development of such policies through the JWFTF, and other groups as appropriate.
- 5.2 The Commissioners, the BWA and its members will each promote good practice in the identification and prevention of alcohol fraud;
- 5.3 The Commissioners, the BWA and its members will work together to provide a programme of joint training with the objective of increasing awareness for officers and members;
- 5.4 The Commissioners, the BWA and its individual members will use this MoU to publicise the Commissioners/Trade partnership in tackling alcohol fraud to the mutual benefit of all parties;
- 5.5 The Commissioners and the BWA will review the MoU annually and will monitor and report on its implementation through the JWFTF.

6. Term

This MoU will continue in operation until either party gives the other three months written notice of its intention to withdraw from the MoU and its obligations hereunder.

7. Legal Obligations

The signing of this MoU is not intended to create binding legal obligations on the parties. The MoU is signed by the BWA on behalf of, and with the full agreement and consent of, its members listed at Annex 1 hereto. The BWA will use its best endeavours, to the extent that it is reasonable to do so, to secure the compliance of its members with the MoU.

Marks & Spencer PLC
Kuehne&Nagel Ltd
McPherson Ltd
Medway Bond & Storage Co Ltd
J&A Mitchell& Co Ltd
Morrison Bowmore Ltd
MRS Distribution Ltd
The North British Distillery Co Ltd
The "Old Bushmills" Distillery Co Ltd
Presentation Products
Pricewaterhouse Coopers
Promotional Packaging Scotland Ltd
J.G.Russell (Transport) Ltd
Red Prairie
Schenkers Ltd
Seckford Wines Ltd
Speyside Distillers Co Ltd
Snowie (Logistics & Storage) Ltd
System Lynx Ltd
TDG PLC
Tablogix Ltd
Wincanton Group Ltd
Whyte & Mackay Ltd
Yates Brothers Ltd

Joint Warehousing & Distribution Fraud Task Force (JWFTF)

Terms of Reference

Smuggling and fraud involving duty suspended excise products are estimated to cost the UK Government millions of pounds in lost revenue each year. The sale of illicit duty suspended excise products and other alcohol (non-duty paid and often poor quality) in the UK also harms the reputation of the legitimate trade and undermines the profitability of honest, law-abiding businesses.

The JWFTF is an initiative between HM Revenue & Customs and the UK warehousing industry, which aims to improve the efficiency and effectiveness of Customs' activity to tackle excise smuggling and fraud to their mutual benefit.

The JWFTF will achieve this by:

- Involving the main trade representatives for the UK warehousekeepers (the Bonded Warehousekeepers Association and the United Kingdom Warehousing Association), and (as appropriate) individual companies;
- Meeting on a regular basis at working level, as a single forum or in sub-groups as appropriate, and with occasional meetings at senior (Chief Executive and, if appropriate, Ministerial) level;
- Building a shared understanding of the scope and nature of the problem;
- Developing and maintaining innovative ways of jointly combating fraud and of minimising the impact of the Commissioners activity on the legitimate trade, making best use of technology wherever possible;
- Establishing and maintaining procedures and methods of communication, within a legal framework, for the structured and regular two-way exchange of data and intelligence;
- Agreeing and implementing Memoranda of Understanding (MOU) between the Commissioners and the warehousing industry and trade, as appropriate;
- Promoting good practice;
- Liaising with other Government departments and agencies as appropriate in support of the JWFTF objectives; and,
- Regularly assessing and reporting the impact of the JWFTF work to the members of the group, to the Joint Alcohol Tobacco Consultation

Group (JATCG), the Commissioners and the Minister where appropriate.

ANNEX 3 TO HMRC/BWA MOU DATED []

RECEIPTS

Both the BWA and the Commissioners are aware that fraud can be committed while goods are in transit under duty suspension arrangements.

1. The BWA and its members agree to notify the ACCT on behalf of the Commissioners of:

Cases where bookings are cancelled* (using the notification form at Appendix A to the User Guide);

Instances where goods booked in fail to arrive on the day they are booked in* (before the end of the next working day);

[*Unless warehousekeepers consider there is no risk of potential irregularities given the circumstances]

Where goods arrive that are not expected (before the end of the next working day);

Consignments arriving after the normal transit period indicated in box 17 of the accompanying documentation (by the next working day or earlier);

Provide details of new customers (i.e. when they have accepted a storage quote);

Notify activity by potential or existing customers which falls within the risk criteria set out at (Annex 5 hereto) or as otherwise agreed by the Commissioners through the JWFTF;

2. The BWA and its members signatory hereto will also undertake to:

- 2.1 Withhold details of excise approval numbers until a storage agreement is in place;

- 2.2 Keep records of all enquiries and will endeavour at all times to get as much information as possible at an early stage of an enquiry;

ANNEX 4 TO HMRC/BWA MOU DATED []

DESPATCHES

Both the BWA and the Commissioners are aware that fraud can be committed while goods are in transit under duty suspension arrangements.

Whereas:

1. It is recognised that there is a disproportionate holding of **movement guarantees** in that warehousekeepers are the largest group within the trader population providing movement guarantees. This results from the initial period after 1 January 1993 when it was mandatory for the despatching warehousekeeper to provide the guarantee for intra-Community movements;
2. Both the BWA and the Commissioners accept that in a high proportion of cases the warehousekeeper has no financial interest in the goods being moved under duty suspension nor care and control of those goods. It is desirable that either the owner of those goods or the person/company who has care and control throughout the movement provides the guarantee for any movements;

Accordingly the BWA members agree to:

1. Consider all requests to use their movement guarantee and as to why they should allow their guarantee to be used. The BWA Members will not allow their movement guarantees to be used unless there are overwhelming reasons why they should (e.g. they retain financial interest in the movement and / or arrange and instruct on transport of the goods);
2. Work in line with the agreed procedures for authenticating movement details and at all times ensure that SEED and Financial Security checks are made prior to the movement taking place. [See attached decision flowchart for duty suspended movements – standard format for SEED / Financial Security checks];
3. Issue all drivers of export consignments with copies of the Commissioners' leaflets regarding the movement of duty suspended excise goods (available at <http://www.hmrc.gov.uk/>) and record the issue thereof;
4. In the case of intra-UK movements pre-advise the receiving warehouse of the proposed despatch prior to release by telephone, fax or e-mail. A copy of the advice is to be sent to the ACCT on behalf of the Commissioners on the notification form at Appendix A to the User

Guide; unless warehousekeepers consider there is no risk of potential irregularities given the circumstances.

5. Ensure that as much detail as possible is included on the accompanying documentation to assist with load identification. This could include any lot/batch rotation numbers

The Commissioners agree that:

If they receive information as part of the MOU suggesting that a consignment represents a higher than normal risk they will assess the situation. If appropriate the Commissioners will:

1. Impose suitable conditions or restrictions upon the movement (e.g. requiring a movement to be despatched duty paid);
2. Ensure that the condition / restriction applies to the goods (by rotation number) and not the present owner.
3. Raise EWS-E¹ messages as appropriate.

¹ Early Warning System (excise) – a form of mutual assistance request made around the time the goods are despatched.

ANNEX 5 TO BWA/HMRC MOU DATED [] 2006

OTHER RISK INDICATORS:

Both the Commissioners and the BWA accept that frauds are often organised and run by parties distancing themselves from liability/ visibility in any duty suspended movements (possibly operating behind a sham company or individual) and that such activity is often indicated by unusual indicators or business acting in an apparently non-commercial way. These include the following:

- Proposed movements that make no commercial sense;
- Predominately cash payments (or any other unusual means of payment);
- Significant, sudden or unusual increases in existing business.
- Unusual decreases in business.
- Goods coming from high risk areas as notified by the Commissioners
- How quickly a new customer asks for warehouse registration details;
- Reluctance to give details of the company;
- Mobile phone contact only - unable to contact consignor;
- Customer not registered for WOWGR as goods cannot remain in the warehouse unless a WOWGR certificate is supplied;
- Telephone number does not match company address;
- Customers or their employees not aware of Customs requirements i.e. no knowledge of WOWGR etc;
- Transport arrangements not consistent with the type of movement involved;
- Driver unsure of final destination;
- Unusually efficient return of copy 3 AADs
- Undue pressure is put on your company to allow the use of your guarantee;

ANNEX 6 TO BWA/HMRC MOU DATED [] 2006

INTRA-COMMUNITY MOVEMENTS: PROCEDURES TO BE FOLLOWED

