

FOOD+ DRINK



George Frier
Head of Food and Drink

Welcome to our new quarterly update on food and drink matters, designed to bring you topical content and comment from our people working in this dynamic and growing sector.

Shepherd and Wedderburn is proud of its track record in helping food and drink companies, large and small, domestic and foreign owned, with industry-focused commercial advice across all aspects of their business. In recent months we have helped companies with product recalls, competition law challenges, brand protection, and acquisition services.

In this edition we cover some topical matters – there have been many recent changes in food audit practices and we take a look at what the latest changes may entail. We also look at crisis management, providing details of an important workshop being run by the Scottish Food and Drink Federation, at which Shepherd and Wedderburn is presenting.

We hope you find coverage in the newsletter of interest, and look forward to seeing you at forthcoming industry events, including the Scotland Food & Drink AGM in March.

Crisis Management in the Food and Drink Industry

Workshop – 9th March, Glasgow

The Scottish Food & Drink Federation, the manufacturers' organisation, in which Shepherd and Wedderburn is the sole Scottish legal representative/associate member, will be running a new workshop on Crisis Management.

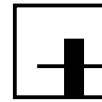
With the current emphasis on provenance, supply chain liability and the increasingly distinct regulatory climate in Scotland, this workshop is essential for any party operating in manufacture or distribution of food or drink in or from Scotland.

Speakers from the firm, together with the Chief Executive of Food Standards Scotland, Geoff Ogle, and other food industry experts will take you through a workshop focusing on the practical aspects of managing a crisis.

This is the first time this workshop has been run in Scotland; in England in previous years it has been over-subscribed, so you are advised to register early.

The event is being held in Glasgow on 9th March 2016 from 9am-1pm – further details and information on how to book can be found on the [SFDF website](http://SFDF.org.uk).

We look forward to seeing you then.



Food Audits and Food Safety Culture

The Cooperative Group is the latest retailer to introduce unannounced food safety audits – a step introduced by Asda in 2013. What are the benefits of such audits, and where do they fall short?

Food Safety has always been critical but the biggest challenge with multiple links in the supply chain is to have confidence in the strength of each link. There have been numerous recalls associated with food safety (including provenance) and the cost and reputational damage associated with a recall is huge, particularly if the manufacturer or distributor in question is caught in the spotlight and on the back foot. So while UK Food Business Operators (FBOs) can take pride in generally high food safety standards, the continued challenge is to ensure that FBOs embed a Food Safety Culture throughout their organisation.

So what are the benefits of such audits, and are they helpful?

Food Audits provide significant reassurance but as “Horsegate” demonstrated, they are not an absolute protection where determined fraudsters exploit weaknesses in the food chain. In addition, records are likely to be falsified – how readily will this be picked up in audit? However, if there is cross-industry realisation that food audits will be unannounced, this must surely embed a continuous improvement culture in FBOs and give all concerned greater confidence in the supply chain.

Food Audits: What is the purpose?

- Drive improvements in food safety.
- Ensure systems are in place to meet customer product quality requirements.
- Provide confidence to customers through audit reports and certification of sites.
- Reduce the need for multiple customer food safety audits.
- Provide recognition and trading opportunities for certificated sites.
- Form part of a due diligence defence.

Food Audits: What are the limitations?

- All audits are based on a sampling process – they provide assurance but not absolute guarantees.
- Auditors are people and not machines.
- Factory circumstances can change between audits.
- Standards are risk-based industry agreed best practice but can never represent every customer’s specific requirements.
- There is never any absolute protection against food fraud.

Slavery and Human Trafficking

Food Business Operators need to be alert to the risk of “modern” slavery practices in their supply chains. The Modern Slavery Act requires businesses turning over more than £36m a year to report annually (for financial years ending on or after 31 March 2016) on the steps they have taken to ensure that such practices do not exist in their supply chain. In particular, this will target the use of forced labour.

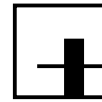
The Act is capable of application to both UK-based organisations operating abroad and those operating abroad but carrying out part of their business in the UK.

The statement needs to set out the steps the organisation has taken that year to ensure that slavery and human trafficking is not taking place either in its business or in its supply chains. Clearly, the ability to audit supply chains will be fundamental, and suppliers should anticipate that supermarkets and wholesalers will require rigorous compliance to ensure that they are not tainted by improper practices by or ignorance of their suppliers adversely impacting on them and their reputations.

Such a statement might usefully include the policies of the business for diligence and auditing; commentary on internal training and policing of compliance; and risk identification, evaluation and management.

The importance of this cannot be overstated. The UK government is committed to stamping out slavery and human trafficking, and shifting some of the onus on to larger corporates is a strategic part of this objective.

Detailed guidance should be sought particularly where group structures and/or overseas operating entities are involved.



Buying a Dram?

Many new distilleries are springing up and there is increased interest from investors and trade buyers in existing distilleries, particularly those with strong brands. Shepherd and Wedderburn has wide experience in the acquisition, sale, financing, construction and operational issues which arise.

Regardless of the stage of the project, or the perspective of the client, there are several key common issues likely to be encountered in a transaction in this sector:

- **Corporate structure** Often, a historic asset owned in a complex group (if existing) or a Newco vehicle for a start-up. Either way, the diligence process must confirm that all relevant assets (brands, licences, distribution rights etc.) are contained within the correct vehicle.
- **IP / IT** IP owned by the distillery projectco can take many forms, as seen when Shepherd and Wedderburn acted for William Grant & Sons in its acquisition of Drambuie. Securing the Drambuie secret recipe was of paramount importance. Verifying ownership of domain names and trademarks which may (or may not!) be worldwide will be essential. We recently had to give advice to a liquidator on complex worldwide IP rights before the assets could be offered for sale.
- **Construction** Prospective funders and purchasers will expect a full package of contracts, appointments and warranties to be in place regarding any current or recent buildings.
- **Regulatory** HMRC controls govern the operation of bonded warehouses with particular issues for overseas controlled entities. There may also be legacy issues arising from transfers between bond. Advice on change of control is essential.

Our in depth experience of this sector has left us ideally placed to conduct in-depth diligence and advise work-arounds on any project.



Scotland Food and Drink Excellence Awards 2016

Shepherd and Wedderburn has again for 2016 committed to sponsor the hotly contested 'Alcoholic Drink' category at Scotland's very own food and drink 'Oscars', the *Scotland Food and Drink Excellence Awards*.

Celebrating excellence across the sector, 50 businesses will do battle across 19 categories at the coveted event, taking place this year at the Edinburgh International Conference Centre (EICC) in June. Around 700 guests are expected to attend.

Commenting on the event, Corporate Partner George Frier, head of the firm's Food and Drink sector group, said: "The craft beer and bespoke spirit sector has been transformed in Scotland in the past ten years and by sponsoring this award we are recognising this. We have a long track record of supporting innovative food and drink companies so it is appropriate that we support the latest wave of high-quality products being brought to market."

The awards are organised by Scotland Food & Drink in partnership with The Royal Highland and Agricultural Society of Scotland. Tickets are available now from Scotland Food and Drink's [dedicated online portal](#).

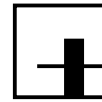
Timeline of activity leading up to the Awards:

Deadline for applications – Friday 11th March

Finalists announced – Monday 25th April

Awards ceremony and dinner – Thursday 2nd June





Key contacts



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George is a Corporate partner in our Glasgow office. He has acted for many household name companies, with a particular focus on domestic and cross-border acquisitions and joint ventures, commercial contract advice, and restructurings. He has many years' experience with food distribution and supply issues, food manufacturing companies, and of the complexities of the fish farming and whisky industries.



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