

SCHEDULE 2

Regulation 18

Regulation (EU) No 1151/2012 of the European Parliament and of the Council: new provisions

PART 1

Article 3: new definitions

Commencement Information

II Sch. 2 Pt. 1 in force at 31.12.2020, see reg. 1(7)

“(9) ‘the EUWA’ means the European Union (Withdrawal) Act 2018;

(10) ‘EU Regulation 1151/2012’ means Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs as it had effect before IP completion day;

(11) ‘Regulation 1308/2013’ means Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products;

(12) ‘Regulation 664/2014’ means Commission Delegated Regulation (EU) No 664/2014 supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council with regard to the establishment of the Union symbols for protected designations of origin, protected geographical indications and traditional specialities guaranteed and with regard to certain rules on sourcing, certain procedural rules and certain additional transitional rules;

(13) ‘the Quality Schemes Regulations’ means the Quality Schemes (Agricultural Products and Foodstuffs) Regulations 2018 as they extend to Great Britain;

(14) ‘an Article 52(4) approval notice’ means a notice published under Article 52(4) relating to a decision of the Secretary of State to approve an application to register a designation of origin or geographical indication;

(15) ‘the designated authority’ means:

- (a) unless point (b) or (c) applies, the person specified in regulation 3(2) of the Quality Schemes Regulations as the person responsible for carrying out the relevant function;
- (b) in a case where an official control has been delegated to a delegated body in accordance with Article 39, the delegated body to which the relevant function has been delegated;
- (c) in a case where an enforcement authority has been appointed under regulation 6(2) of the Quality Schemes Regulations to carry out the relevant function in respect of a specified area, the appointed enforcement authority in relation to that area;

(16) ‘domestic law’ means the means the law of England and Wales and Scotland;

(17) ‘enters into force’, in relation to a reference to an international agreement, includes, where the provisional application of that agreement is agreed between the parties before it enters into force, the provisional application of the agreement and ‘entry into force’ is to be construed accordingly;

(18) ‘established protected designation of origin’ means a designation of origin within the meaning of Article 5(1) to which Article 54(2) of the EU withdrawal agreement applies;

(19) ‘established protected geographical indication’ means a geographical indication within the meaning of Article 5(2) to which Article 54(2) of the EU withdrawal agreement applies;

(20) ‘established protected traditional speciality guaranteed’ means a traditional speciality guaranteed within the meaning of Article 18(1) to which Article 54(2) of the EU withdrawal agreement applies;

Changes to legislation: There are currently no known outstanding effects for the *The Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations 2020, SCHEDULE 2.* (See end of Document for details)

(21) ‘EUIA’ means an international agreement made between the European Union and a third country that provides for the protection of a designation of origin or geographical indication of the third country in the European Union;

(22) ‘FTT’ means the First-tier Tribunal;

(23) ‘Great Britain’s PDOs and PGIs Register’ means the register established and maintained by the Secretary of State under Article 11(1);

(24) ‘Great Britain’s TSGs Register’ means the register established and maintained by the Secretary of State under Article 22(1);

(25) ‘the original applicant’, in a case where an appeal has been made in respect of a decision made by the Secretary of State in relation to a designation of origin, geographical indication or traditional speciality guaranteed under Article 54, or following the submission of an application under Article 49 or 53, or a request submitted under Article 54, means the person who submitted the application or request;

(26) ‘the relevant period’ means the period beginning on IP completion day and expiring at the end of the day that falls nine months after the day on which IP completion day falls;

(27) ‘retained EU law’ has the meaning given in section 6(7) of the EUWA but does not include any legislation so far as it extends to Northern Ireland;

[^{F1}(28) ‘third country’ means—

(a) for the purposes of the definition of ‘EUIA’ in point (21), Article 14c and Annex 1A (other than the reference in paragraph (b)), any country other than—

- (i) any part of the British Islands, or
- (ii) a member State;

(b) for the purposes of the reference in column 2 of row 6 of the Types Table in Part 3 of Annex 1A, any country other than any part of the British Islands;

(c) for all other purposes, any country other than the United Kingdom, and includes:

- (i) the Bailiwick of Guernsey;
- (ii) the Bailiwick of Jersey;
- (iii) the Isle of Man;]

(29) ‘the TMA’ means the Trade Marks Act 1994;

(30) ‘the Types Table’ means the table in Part 3 of Annex 1A.”

F1 Words in Sch. 2 Pt. 1 substituted (31.12.2020 immediately before IP completion day) by [The Agricultural Products, Food and Drink \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1661\)](#), regs. 1(2)(b), [16\(7\)\(a\)](#)

PART 2

New Article 3a

Commencement Information

I2 Sch. 2 Pt. 2 in force at 31.12.2020, see [reg. 1\(7\)](#)

“Article 3a

Definitions: types of designation of origin and geographical indication

In Article 14a and Annex 1A any reference to:

- (a) ‘a type 1 designation of origin or geographical indication’ means a designation of origin or geographical indication of the type described in column 2 of row 1 of the Types Table;
- (b) ‘a type 2A designation of origin or geographical indication’ means a designation of origin or geographical indication of the type described in column 2 of row 2 of the Types Table to which paragraph 1 or 2 of column 3 of that row applies;
- (c) ‘a type 2B designation of origin or geographical indication’ means a designation of origin or geographical indication of the type described in column 2 of row 2 of the Types Table to which the provisions in column 4 of that row apply;
- (d) ‘a type 3A designation of origin or geographical indication’ means a designation of origin or geographical indication of the type described in column 2 of row 3 of the Types Table to which paragraph 1 or 2 of column 3 of that row applies;
- (e) ‘a type 3B designation of origin or geographical indication’ means a designation of origin or geographical indication of the type described in column 2 of row 3 of the Types Table to which the provisions in column 4 of that row apply;
- (f) ‘a type 4A designation of origin or geographical indication’ means a designation of origin or geographical indication of the type described in column 2 of row 4 of the Types Table to which paragraph 1 or 2 of column 3 of that row applies;
- (g) ‘a type 4B designation of origin or geographical indication’ means a designation of origin or geographical indication of the type described in column 2 of row 4 of the Types Table to which the provisions in column 4 of that row apply;
- (h) ‘a type 5A designation of origin or geographical indication’ means a designation of origin or geographical indication of the type described in column 2 of row 5 of the Types Table to which paragraph 1 or 2 of column 3 of row 4 of that table applies;
- (i) ‘a type 5B designation of origin or geographical indication’ means a designation of origin or geographical indication of the type described in column 2 of row 5 of the Types Table to which the provisions in column 4 of row 4 of that table apply;
- (j) ‘a type 6A designation of origin or geographical indication’ means a designation of origin or geographical indication of the type described in column 2 of row 6 of the Types Table to which paragraph 1 or 2 of column 3 of row 4 of that table applies;
- (k) ‘a type 6B designation of origin or geographical indication’ means a designation of origin or geographical indication of the type described in column 2 of row 6 of the Types Table to which the provisions in column 4 of row 4 of that table apply.”

PART 3

New Articles 14a and 14b

Commencement Information

I3 Sch. 2 Pt. 3 in force at 31.12.2020, see reg. 1(7)

“Article 14a

*Transitional provisions: relations between trade marks,
designations of origin and geographical indications*

1. Unless paragraph 4 applies, an application to register a trade mark that was pending immediately before IP completion day or filed during the relevant period must be refused where, if the trade mark is registered, the use of the trade mark will contravene Article 13(1) in relation to a category A designation of origin or geographical indication.

2. Unless paragraph 4 applies, an application to register a trade mark that was pending immediately before IP completion day or filed during the relevant period must be refused where:

- (a) if the trade mark is registered, the use of the trade mark will contravene Article 13(1) in relation to a category B designation of origin or geographical indication, and
- (b) after the application for the trade mark is accepted but before the trade mark is registered:

- (i) in the case of a type 3B designation of origin or geographical indication:

- (aa) the international agreement referred to in paragraph (c) of column 2 of row 3 of the Types Table enters into force [^{F2}or the bridging arrangements referred to in that column are made], and

- (bb) the entry into force of the international agreement [^{F3}or the making of the bridging arrangements] is brought to the attention of the registrar before the trade mark is registered;

- (ii) in the case of any other category B designation of origin or geographical indication:

- (aa) the Secretary of State publishes an Article 52(4) approval notice relating to the designation of origin or geographical indication, and

- (bb) the Article 52(4) approval notice is brought to the attention of the registrar before the trade mark is registered.

3. Where an application for a declaration of invalidity is made under the TMA (as applied by Article 14b(1) and modified by Article 14b(2)) in relation to the registration of a trade mark, the registration of the trade mark must be declared to be invalid, unless paragraph 4 applies, if:

- (a) the application to register the trade mark was pending immediately before IP completion day or filed during the relevant period,
- (b) the use of the trade mark contravenes, or will, if used, contravene, Article 13(1) in relation to a category B designation of origin or geographical indication, and
- (c) in the case of a type 2B, 4B, 5B or 6B designation of origin or geographical indication, the Secretary of State publishes an Article 52(4) approval notice relating to the designation of origin or geographical indication on or after the day on which the trade mark application is accepted.

4. This paragraph applies where a column 5 date applies in relation to a category A or B designation of origin or geographical indication and, taking account of any priority claimed in respect of an application to register the trade mark referred to in paragraph 1, 2 or 3(a) (as relevant) and on the basis of the information available to the registrar, it appears to the registrar that the date of filing of the trade mark application is earlier than the column 5 date that applies to the relevant designation of origin or geographical indication.

5. As regards paragraphs 1 and 2, a column 5 date does not apply in relation to a type 3A, 4A or 5A designation of origin or geographical indication where the EUIA referred to

in paragraph (b) in column 2 of the row of the Types Table relating to the designation of origin or geographical indication provides that an application for a trade mark must be refused, regardless of when that application is filed, if the trade mark, if registered, will contravene a provision in the EUIA providing for the protection of the use of the designation of origin or geographical indication

6. As regards paragraph 3, a column 5 date does not apply in relation to a type 3B, 4B or 5B designation of origin or geographical indication where the EUIA referred to in paragraph (b) in column 2 of the row of the Types Table relating to the designation of origin or geographical indication provides that the registration of a trade mark must be invalidated if, regardless of when the application that resulted in the registration of the trade mark is filed, the use of the trade mark contravenes a provision in the EUIA providing for the protection of the use of the designation of origin or geographical indication.

7. Where a designation of origin or geographical indication falls within the definition of more than one type of designation of origin or geographical indication in Article 3a, the column 5 date to be taken into account for the purpose of paragraph 4 is the earliest of the column 5 dates for the relevant types of designation of origin or geographical indication.

8. In a case of a category A or B designation of origin or geographical indication that is not on Great Britain's PDOs and PGIs Register at the time an assessment is carried out under paragraph 1, 2 or 3, the name of the designation of origin or geographical indication is to be treated, for the purpose of the assessment, as having a registered name in determining whether the use of the trade mark will contravene Article 13(1) in relation to that designation of origin or geographical indication.

9. A trade mark that could be used in the United Kingdom under Article 14(2) of EU Regulation 1151/2012 immediately before IP completion day may continue to be used in Great Britain on and after IP completion day:

- (a) notwithstanding that the use of the trade mark would contravene Article 13(1) of this Regulation in Great Britain in relation to a designation of origin or geographical indication registered by the Secretary of State under this Regulation;
- (b) provided that no grounds for the invalidation or revocation of the trade mark exist in, or under, the TMA.

10. Nothing in this Regulation prevents a trade mark that could be renewed in the United Kingdom pursuant to Article 14(2) of EU Regulation 1151/2012 immediately before IP completion day from being renewed after IP completion day:

- (a) notwithstanding that the use of the renewed trade mark would contravene Article 13(1) in Great Britain in relation to a designation of origin or geographical indication registered by the Secretary of State under this Regulation;
- (b) provided that no grounds for the invalidation or revocation of the trade mark exist in, or under, the TMA.

11. Where paragraph 9 or 10 applies to the use or renewal of a trade mark, this does not affect the use of:

- (a) a designation of origin or geographical indication entered on Great Britain's PDOs and PGIs Register by the Secretary of State under Article 11(2) [^{F4}or 14c(1)];
- (b) an established protected designation of origin or an established protected geographical indication entered on Great Britain's PDOs and PGIs Register pursuant to Article 16;
- (c) a designation of origin or geographical indication entered on Great Britain's PDOs and PGIs Register following a decision by the Secretary of State to approve an

application to register the designation of origin or geographical indication following an application submitted under Article 49.

12. In this Article:

- ^{F5}(a)
- (b) ‘a category A designation of origin or geographical indication’ means a type 1, 2A, 3A, 4A, 5A or 6A designation of origin or geographical indication;
- (c) ‘a category B designation of origin or geographical indication’ means a type 2B, 3B, 4B, 5B or 6B designation of origin or geographical indication;
- (d) ‘column 5 date’, in relation to a designation of origin or geographical indication that is a category A or B designation of origin or geographical indication, means the date described in column 5 of the Types Table in the row relating to the relevant type of designation of origin or geographical indication;
- (e) ‘date of filing’:
 - (i) in the case of an EUTM-based trade mark application, means the filing date referred to in paragraph 25(2)(a)(i) of Schedule 2A to the TMA for the existing EUTM application;
 - (ii) in the case of an ITM-based trade mark application, means:
 - (aa) in the case of an application for the registration of a trade mark to which paragraph 28 of Schedule 2B to the TMA applies, the date referred to in paragraph 28(2)(a) of that Schedule for the existing ITM application or existing request for EU extension (as the case may be);
 - (bb) in the case of an application for the registration of a trade mark to which paragraph 29 of Schedule 2B to the TMA applies, the date referred to in paragraph 29(2)(a) of that Schedule for the existing ITM application or existing request for EU extension (as the case may be);
 - (iii) in any other case, has the meaning given by section 33 of the TMA;
- (f) ‘EUTM-based trade mark application’ means an application to register a trade mark to which paragraph 25(1) of Schedule 2A to the TMA applies that is made within the period specified in paragraph 25(2) of that Schedule;
- (g) ‘existing EUTM application’ has the same meaning as in paragraph 24 of Schedule 2A to the TMA;
- (h) ‘existing ITM application’ has the same meaning as in paragraph 27(1)(a) of Schedule 2B to the TMA;
- (i) ‘existing request for EU extension’ has the same meaning as in paragraph 27(1)(b) of Schedule 2B to the TMA;
- (j) ‘ITM-based trade mark application’ means an application to register a trade mark to which paragraph 28(1) or 29(1) of Schedule 2B to the TMA applies that is made within the period specified in paragraph 28(1)(c) or 29(1)(c) (as the case may be) of that Schedule;
- (k) ‘the registrar’ has the meaning given by section 62 of the TMA.

13. Any reference in this Article to:

- (a) ‘priority claimed in respect of an application’:
 - (i) in the case of an EUTM-based trade mark application, means any priority claimed in respect of the existing EUTM application referred to in paragraph 25(2)(a)(ii) of Schedule 2A to the TMA;

- (ii) in the case of an ITM-based trade mark application, means any priority claimed in respect of the existing ITM application or the existing request for EU extension referred to in paragraph 28(2)(b) or 29(2)(b) (as the case may be) of Schedule 2B to the TMA;
- (iii) in any other case, means any priority claimed in respect of the application pursuant to section 35 of the TMA;
- (b) an application to register a trade mark that was ‘pending immediately before IP completion day’ is a reference to an application that was neither refused, nor resulted in the registration of the trade mark that is the subject of the application, before IP completion day;
- (c) a trade mark includes a reference to:
 - (i) a collective mark as defined in section 49(1) of the TMA;
 - (ii) a certification mark as defined in section 50(1) of the TMA.

Article 14b

Application and modification of trade mark provisions

1. For the purpose of Article 14a, the following provisions of the TMA apply, with the modifications, in the case of sections 47(3) and (5), 74(1), 76(1) and 77(1), specified in paragraph 2:

- (a) subsections (3) to (5) and (6) of section 47 (invalidation of trade marks) in relation to an application to invalidate a trade mark referred to in Article 14a(3);
- (b) section 72 (registration to be prima face evidence of validity);
- (c) section 73 (certificate of validity of contested application);
- (d) section 74 (registrar's appearance in proceedings involving the register of trade marks);
- (e) section 75 (definition of ‘the court’);
- (f) section 76 (appeals) except for subsection (5);
- (g) section 77(1) (persons appointed to hear and determine appeals).

2. The modifications are:

- (a) section 47 applies as if:
 - (i) in subsection (3), in the words before paragraph (a), after ‘invalidity’ there were inserted ‘made under this section, as applied by Article 14b(1) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs,’;
 - (ii) in subsection (5), for ‘grounds of invalidity exist’ there were substituted ‘ground for invalidity specified in Article 14a(3) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council exists’;
- (b) section 74(1) applies as if, for the words from ‘for’ to ‘the registrar’ there were substituted ‘for a declaration of the invalidity of the registration of a trade mark, the registrar’;
- (c) section 76(1) applies as if:
 - (i) in the first paragraph, for the words from ‘under’ to the end there were substituted ‘made under Article 14a of Regulation (EU) No 1151/2012 of the European Parliament and of the Council’;

Changes to legislation: There are currently no known outstanding effects for the *The Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations 2020, SCHEDULE 2.* (See end of Document for details)

(ii) the second paragraph were omitted;

(d) section 77(1) applies as if, at the end there were inserted ‘as applied by Article 14b(1) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council’.

3. In the case of the following proceedings, the rules made under section 68 or 69 of the TMA apply to those proceedings as they apply to proceedings involving an application of the type referred to in section 74(1)(b) of the TMA:

(a) an application to invalidate a trade mark referred to in Article 14a(3);

(b) an appeal to an appointed person from a decision of the registrar in relation to an application referred to in paragraph (a).”

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| F2 | Words in Sch. 2 Pt. 3 inserted (31.12.2020 immediately before IP completion day) by The Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1661) , regs. 1(2)(b), 16(7)(b)(i)(aa) |
| F3 | Words in Sch. 2 Pt. 3 inserted (31.12.2020 immediately before IP completion day) by The Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1661) , regs. 1(2)(b), 16(7)(b)(i)(bb) |
| F4 | Words in Sch. 2 Pt. 3 inserted (31.12.2020 immediately before IP completion day) by The Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1661) , regs. 1(2)(b), 16(7)(b)(ii) |
| F5 | Words in Sch. 2 Pt. 3 omitted (31.12.2020 immediately before IP completion day) by virtue of The Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1661) , regs. 1(2)(b), 16(7)(b)(iii) |

PART 4

New Article 52a

Commencement Information

- I4** Sch. 2 Pt. 4 in force at 31.12.2020, see [reg. 1\(7\)](#)

“Article 52a

Applications pending on IP completion day

1. A pending application made under EU Regulation 1151/2012 before IP completion day is deemed to be an application made under Article 49(2) of this Regulation for which scrutiny under Article 50(1) of this Regulation has not been commenced.

2. Unless requested not to do so in writing by the applicant who submitted the application under EU Regulation 1151/2012, the Secretary of State must scrutinise a pending application under Article 50(1) of this Regulation.

3. But the Secretary of State may decide not to scrutinise a pending application under paragraph 2 in a case where the pending application is an application that has been sent to the European Commission for scrutiny under Article 50(1) of EU Regulation 1151/2012 before IP completion day.

4. The six month period specified in Article 50(1) starts from the day on which IP completion day falls.

5. Where a request of the type specified in paragraph 2 is made in relation to a pending application by an applicant referred to in that paragraph, the pending application is to be treated as having been withdrawn.

6. In this Article ‘pending application’ means an application submitted to the Secretary of State on or after 1st January 2019 or the Secretary of State or the Department for Environment, Food and Rural Affairs before that date:

- (a) to register:
 - (i) a name of a geographical area in, or partly in, the United Kingdom as a designation of origin;
 - (ii) a name of a geographical area in, or partly in, the United Kingdom as a geographical indication;
 - (iii) a name as a traditional speciality guaranteed, and
- (b) for which the European Commission has not adopted an implementing act under Article 52 of EU Regulation 1151/2012 before IP completion day.”

PART 5

New Title 5A

Commencement Information

I5 Sch. 2 Pt. 5 in force at 31.12.2020, see [reg. 1\(7\)](#)

“TITLE 5A APPEALS

Article 54a

Appeals: general

1. An appeal may be made to the FTT against a decision of the Secretary of State specified in column 1 of the table in Part 2 of Annex 1B.
2. Such an appeal may be made:
 - (a) in all cases, by a person specified in the corresponding entry in column 2 of the table in Part 2 of Annex 1B;
 - (b) in the case of a decision affecting an application submitted by the authorities of a third country, by the authorities of that third country.
3. In determining such an appeal the FTT:
 - (a) must consider the decision appealed against afresh, and
 - (b) may take into account evidence that was not available to the Secretary of State.
4. The FTT may:
 - (a) dismiss the appeal, or
 - (b) if it allows the appeal, exercise any power specified in the corresponding entry in the third column of the table in Part 2 of Annex 1B.

Changes to legislation: There are currently no known outstanding effects for the The Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations 2020, SCHEDULE 2. (See end of Document for details)

5. Where the FTT remits a matter to the Secretary of State for reconsideration and fresh decision:

- (a) the Secretary of State, after making a fresh decision, must publish, in such manner as appears appropriate to the Secretary of State from time to time, a notice informing the original applicant, the appellant (if different) and the public of that fresh decision and the reasons for that decision;
- (b) the provisions of this Title and Annex 1B apply to the fresh decision made by the Secretary of State.

6. An appeal made under paragraph 1 in relation to a decision of the Secretary of State specified in column 1 of the table in Part 2 of Annex 1B does not prevent an entry recorded on Great Britain's PDOs or PGIs Register or Great Britain's TSGs Register by the Secretary of State following that decision from having effect.

7. The entry referred to in paragraph 6 continues to have effect, despite the appeal, unless the appeal is allowed by the FTT and:

- (a) in a case where the FTT quashes the Secretary of State's decision and directs the Secretary of State to take specified action, that action has been taken;
- (b) in a case where the FTT remits the matter to the Secretary of State for reconsideration and fresh decision, the relevant entry ceases to have effect as a result of consequent action taken in relation to the entry in the register following the fresh decision taken by the Secretary of State.

Article 54b

Secretary of State decision to consider a decision afresh and the effect of that decision on an appeal

1. The Secretary of State may consider a decision specified in column 1 of the table in Part 2 of Annex 1B ('the original decision') afresh if evidence becomes available to the Secretary of State after making the original decision that was not available to the Secretary of State at the time of the original decision.

2. Paragraph 1 applies even though an appeal has been made to the FTT in respect of the original decision.

3. Where the Secretary of State decides to consider an original decision afresh in a case where an appeal has been made to the FTT in respect of that decision:

- (a) the Secretary of State must notify the FTT of the Secretary of State's decision to consider the original decision afresh and publish, in such manner as appears appropriate to the Secretary of State from time to time, a notice informing the appellant, the original applicant (if different) and the public of that decision;
- (b) the appeal to the FTT is suspended until such time as the Secretary of State has made a fresh decision in relation to the matter;
- (c) the Secretary of State must, following the making of the fresh decision, notify the FTT of that decision and publish, in such manner as appears appropriate to the Secretary of State from time to time, a notice informing the appellant, the original applicant, (if different) and the public of that decision and the reasons for that decision.

4. If the Secretary of State makes the same decision again, the appeal to the FTT restarts.

5. If the Secretary of State makes a different decision, the appeal to the FTT ceases unless the FTT directs otherwise."

PART 6

New Article 56

Commencement Information

I6 Sch. 2 Pt. 6 in force at 31.12.2020, see reg. 1(7)

“Article 56

Regulations

1. Any power to make regulations conferred on the Secretary of State by this Regulation is exercisable by statutory instrument.
2. Such regulations may:
 - (a) contain supplementary, incidental, consequential, transitional or saving provision (including provision amending, repealing or revoking an enactment);
 - (b) make different provision for different purposes.
3. Except as specified in paragraph 4, a statutory instrument containing regulations under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.
4. A statutory instrument containing regulations made under the second subparagraph of Article 2(1) or Article [F614d(4),] 18(5), 30(1) or 41(3) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
5. Before making any regulations under this Regulation, the Secretary of State must consult:
 - (a) such bodies or persons as appear to the Secretary of State to be representative of the interests likely to be substantially affected by the regulations;
 - (b) such other bodies or persons as the Secretary of State may consider appropriate.
6. In this Article, ‘enactment’ means:
 - (a) an enactment contained in any Order in Council, order, rules, regulations or other instrument made under an Act, except so far as it extends to Northern Ireland;
 - (b) regulations made under retained direct principal EU legislation, except so far as they extend to Northern Ireland;
 - (c) retained direct minor EU legislation, except so far as it extends to Northern Ireland.”

F6 Word in Sch. 2 Pt. 6 inserted (31.12.2020 immediately before IP completion day) by [The Agricultural Products, Food and Drink \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1661\)](#), regs. 1(2)(b), 16(7)(c)

PART 7

New Annexes 1A and 1B

Commencement Information

I7 Sch. 2 Pt. 7 in force at 31.12.2020, see reg. 1(7)

“ANNEX 1A

TYPES OF DESIGNATION OF ORIGIN AND GEOGRAPHICAL INDICATION TO WHICH ARTICLE 14A APPLIES

PART 1

Interpretation

1. In the table in Part 3:

- (a) ‘an Article 52(4) notice’ means a notice published by the Secretary of State under Article 52(4);
- (b) ‘the European Commission’s PDOs and PGIs Register’ means the register established and maintained by the European Commission pursuant to Article 11(1) of EU Regulation 1151/2012;
- (c) ‘the paragraph 1 trade mark application’ means the application to register a trade mark referred to in Article 14a(1);
- (d) ‘the relevant EUIA-based date’ means the date determined in accordance with Part 2;
- (e) ‘the relevant pre-IP completion day legislation’ means:
 - (i) in the case of an application to register a designation of origin or geographical [^{F7}indication] submitted to the European Commission under Council Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs^{M1}, Article 5 or 12a of that Regulation;
 - (ii) in the case of an application to register a designation of origin or geographical [^{F8}indication] submitted to the European Commission under Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, Article 5 of that Regulation;
 - (iii) in the case of an application to register a designation of origin or geographical [^{F9}indication] submitted to the European Commission under EU Regulation 1151/2012, Article 49(2) or (5) of that Regulation;
- (f) ‘the relevant trade mark application’ means the application to register a trade mark referred to in Article 14a(2) or (3)(a), as relevant.

PART 2

The relevant EUIA-based date

2. In the table in Part 3, in a case where the relevant EUIA-based date applies, the relevant EUIA-based date means:

- (a) the date provided for in paragraph 3, or
- (b) where paragraph 3 does not apply, the date provided for in the relevant point of paragraph 4, or paragraph 5, as relevant to the designation of origin or geographical indication.

3. In a case where the EUIA referred to in paragraph (b) in column 2 of the row of the Types Table relating to a designation of origin or geographical indication contained priority provisions that applied to the designation of origin or geographical indication, the relevant EUIA-based date is the priority date provided for in the EUIA that applied to that designation of origin or geographical indication.

4. In a case of a type 3A, 3B, 4A or 4B designation of origin or geographical indication to which paragraph 3 does not apply, the relevant EUIA-based date is:

- (a) in a case where the designation of origin or geographical indication was protected in the European Union immediately before IP completion day pursuant to an amendment made to the EUIA (without the need for further action to be taken under the EUIA), the date on which the amendment entered into force;
- (b) in a case where the designation of origin or geographical indication was protected in the European Union immediately before IP completion day pursuant to a provision in the EUIA that was provisionally applied before IP completion day (without the need for further action to be taken under the EUIA), the date on which the provision was provisionally applied;
- (c) in a case where the designation of origin or geographical indication was protected in the European Union immediately before IP completion day pursuant to an amendment made to the EUIA that was provisionally applied before IP completion day (without the need for further action to be taken under the EUIA), the date on which the amendment was provisionally applied;
- (d) in a case where the designation of origin or geographical indication was protected in the European Union immediately before IP completion day following the submission and processing of a request, or application, for protection or assessment (however described) under a provision in the EUIA providing for such requests, or applications, the date on which the request, or application, for protection or assessment was submitted under the EUIA;
- (e) in any other case, including a case where the designation of origin or geographical indication was protected in the European Union immediately before IP completion day pursuant to provisions in the EUIA that applied from the date that the EUIA entered into force (without the need for further action to be taken under the EUIA), the date on which the relevant EUIA entered into force.

5. In a case of a type 5A or 5B designation of origin or geographical indication to which paragraph 3 does not apply and for which a request, or an application, for protection or assessment (however described) was submitted before IP completion day under the EUIA, the relevant EUIA-based date is the date on which the request, or application, for protection or assessment was submitted under the EUIA.

6. Any reference in this Part to:

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- (a) ‘the priority date’ means the date provided for in priority provisions in an EUIA as the date that must be taken into account when determining whether an application for a trade mark may be granted, including:
 - (i) a calendar date specified in the EUIA;
 - (ii) a date relating to the happening of a specified event;
- (b) ‘priority provisions’ means provisions in an EUIA that governed the relationship between trade marks and designations of origin and geographical indications that provided (however expressed):
 - (i) that, in the circumstances specified in the EUIA, an application for a trade mark must be refused if the application for the trade mark was filed after a date provided for in the EUIA,
 - (ii) that, in the circumstances specified in the EUIA, the registration of a trade mark must be invalidated if the application that resulted in the registration of that trade mark was filed after a date provided for in the EUIA, or
 - (iii) for both the refusal of applications for trade marks, and the invalidation of the registration of trade marks, as provided for in points (i) and (ii);
- (c) ‘without the need for further action to be taken under the EUIA’, in relation to a designation of origin or geographical indication protected in the European Union immediately before IP completion day pursuant to an EUIA, means that the provisions in the EUIA providing for the designation of origin or geographical indication to be protected in the European Union did not require:
 - (i) a request or application (however described) to be submitted by the contracting third country under the EUIA in relation to the protection of the designation of origin or geographical indication;
 - (ii) an assessment to be carried out under the EUIA in relation to the designation of origin or geographical indication.

PART 3

Types of designation of origin and geographical indication (the Types Table)

<i>Column 1 Row No.</i>	<i>Column 2 Description of the designation of origin or geographical indication</i>	<i>Column 3 Type A provisions</i>	<i>Column 4 Type B provisions</i>	<i>Column 5 The column 5 date</i>
1.	An established protected designation of origin or established protected geographical indication.	Not applicable.	Not applicable.	The date on which the application that resulted in the first registration of the designation of origin or geographical indication was submitted to the European Commission

			under the relevant pre-IP completion day legislation.
2.	<p>A designation of origin or geographical indication: (a) that relates to a geographical area in the United Kingdom, and (b) for which an application to register the designation of origin or geographical indication was submitted to the European Commission under Article 49(4) of EU Regulation 1151/2012 before IP completion day.</p> <p>1. A designation of origin or geographical indication that is on Great Britain's PDOs and PGIs Register before the day on which the paragraph 1 trade mark application is accepted or refused and is entered on that register following the approval of an application to which Article 52a(1) (pending United Kingdom applications) applies.</p> <p>2. A designation of origin or geographical indication: (a) that is not on Great Britain's PDOs and PGIs Register before the day on which the paragraph 1 trade mark application is accepted or refused, (b) to which Article 52a(1) applies, and (c) for which an Article 52(4) approval notice relating to the application to register the designation of origin or geographical indication is</p>	<p>A designation of origin or geographical indication to which Article 52a(1) applies: (a) which is not treated as having been withdrawn under Article 52a(5), (b) for which an Article 52(4) notice relating to the application to register the designation of origin or geographical indication is not published before the relevant trade mark application is accepted.</p>	<p>The date on which the application to register the designation of origin or geographical indication referred to in point (b) of column 2 was submitted to the European Commission under Article 49(4) of EU Regulation 1151/2012.</p>

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published before the day on which the paragraph 1 trade mark application is accepted or refused.

3. A designation of origin or geographical indication that: (a) relates to a geographical area in a third country, (b) was protected in the European Union immediately before completion day pursuant to an EUIA to which the European Union and the third country were contracting parties, and [F10(c) be protected in Great Britain pursuant to— (i) an international agreement to which the United Kingdom and the third country are contracting parties that enters into force, or (ii) bridging arrangements between the United Kingdom and the third country made, during the relevant period.]
1. A designation of origin or geographical indication that is on Great Britain's PDOs and PGIs Register before the day on which the paragraph 1 trade mark application is accepted or refused and is entered on that register pursuant to Article 11(2) [F11or Article 14c(1)]. [F12. A designation of origin or geographical indication that is not on Great Britain's PDOs and PGIs Register before the day on which the paragraph 1 trade mark application is accepted or refused but must be protected in Great Britain pursuant to— (a) an international agreement to which the United Kingdom and the third country are contracting parties that enters into force, or (b) bridging arrangements between the United Kingdom and the third country made, on or after the day on which the relevant trade mark application is accepted.]
- [F13A designation of origin or geographical indication that is not on Great Britain's PDOs and PGIs Register when the relevant trade mark application is accepted but must be protected in Great Britain pursuant to— (a) an international agreement to which the United Kingdom and the third country are contracting parties that enters into force, or (b) bridging arrangements between the United Kingdom and the third country made, on or after the day on which the relevant trade mark application is accepted.]
- The relevant EUIA-based date that applies to the designation of origin or geographical indication in relation to the EUIA referred to in point (b) of column 2.

(b) bridging arrangements between the United Kingdom and the third country made, before the day on which the paragraph 1 trade mark application is accepted or refused.]

4. A designation of origin or geographical indication that: (a) relates to a geographical area in a third country, and (b) was protected in the European Union immediately before completion day pursuant to an EUIA to which the European Union and the third country were contracting parties.
1. A designation of origin or geographical indication that is on Great Britain's PDOs and PGIs Register before the day on which the paragraph 1 trade mark application is accepted or refused and is entered on that register following the approval of an application to register the designation of origin or geographical indication submitted to the Secretary of State under Article 49 during the relevant period.
2. A designation of origin or geographical indication: (a) that is not on Great Britain's PDOs and PGIs Register before the day on which the paragraph 1 trade mark application is accepted, and (b) for which an application to register the designation of origin or geographical indication is submitted to the Secretary of State under Article 49 during the relevant period.
- A designation of origin or geographical indication that applies to the EUIA-based date that applies to the designation of origin or geographical indication in relation to the EUIA referred to in point (b) of column 2.
- (i) is not submitted before the relevant trade mark application is accepted, or (ii) is submitted before the relevant trade mark application is accepted but for which an Article 52(4) notice relating to the application to register the

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is accepted or designation of refused, origin or (b) for which geographical an application indication is not to register the published before designation of the relevant trade origin or mark application geographical is accepted. indication is submitted to the Secretary of State under Article 49 during the relevant period, and (c) for which an Article 52(4) approval notice relating to the application is published before the day on which the paragraph 1 trade mark application is accepted or refused.

5. A designation of origin or geographical indication: (a) that relates to a geographical area in a third country, (b) for which an assessment relating to the protection of the designation of origin or geographical indication was being carried out, or a request for protection, or an application for assessment for protection, was submitted, before IP completion day in respect of the designation See the entry in row 4 of this column. See the entry in row 4 of this column. The relevant EUIA-based date that applies to the designation of origin or geographical indication in relation to the EUIA referred to in point (b) of column 2.

of origin or geographical indication under an EUIA, and (c) for which no decision was made pursuant to the EUIA before IP completion day as to whether the designation of origin or geographical indication should be protected in the European Union.

6. A designation of origin or geographical indication: (a) that relates to a geographical area in a third country, and (b) for which an application to register the designation of origin or geographical indication was submitted to the European Commission under Article 49(4) or (5) of EU Regulation 1151/2012 before IP completion day that was neither refused nor resulted in the registration of the designation of origin or geographical indication on the European Commission's PDOs and PGIs Register ^{M2} before
- See the entry in row 4 of this column.
- See the entry in row 4 of this column.
- The date on which the application to register the designation of origin or geographical indication referred to in point (b) of column 2 was submitted to the European Commission under Article 49(4) or (5) of EU Regulation 1151/2012.

Changes to legislation: There are currently no known outstanding effects for the The Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations 2020, SCHEDULE 2. (See end of Document for details)

IP completion
day.

ANNEX 1B

APPEALS

PART 1

Interpretation

In the table in Part 2, ‘a valid notice of opposition’ means a notice of opposition that contains the declaration required by the second subparagraph of Article 51(1).

PART 2

Appellants and powers of the FTT on appeal

<i>Column 1 Decision</i>	<i>Column 2 Persons who may appeal against the decision</i>	<i>Column 3 FTT powers</i>
Decision of the Secretary of State to approve an application submitted under Article 49 to register a designation of origin, geographical indication or traditional speciality guaranteed.	The persons are: (a) a person who lodges a valid notice of opposition in relation to the application under Article 51(1); (b) a person marketing a product that is, or may be, affected by the registration of the designation of origin, geographical indication or traditional speciality guaranteed.	Power to: (a) quash the decision and direct the Secretary of State to: (i) remove the entry for the protected designation of origin, protected geographical indication or traditional speciality guaranteed from the relevant register, and (ii) remove the copy of the product specification for the protected designation of origin, protected geographical indication or traditional speciality guaranteed attached to the relevant register, or (b) remit the matter to the Secretary of State for reconsideration and fresh decision.
Decision of the Secretary of State to reject an application submitted under Article 49 to register a designation of origin, geographical indication or traditional speciality guaranteed.	The persons are: (a) the person who submitted the application; (b) a person marketing a product that is, or may be, affected by the decision not to register the designation of	Power to: (a) quash the decision and direct the Secretary of State to register the designation of origin, geographical indication or traditional speciality guaranteed by:

origin, geographical indication or traditional speciality guaranteed.

(i) making an entry for the designation of origin, geographical indication or traditional speciality guaranteed in the relevant register, recording the data specified in Article 14(1) of Implementing Regulation (EU) 668/2014 in the relevant register, and

(ii) attaching a copy of the product specification for the designation of origin, geographical indication or traditional speciality guaranteed to the register, or

(b) remit the matter to the Secretary of State for reconsideration and fresh decision.

Decision of the Secretary of State to approve an application submitted under Article 53 to amend a product specification for a protected designation of origin, protected geographical indication or traditional speciality guaranteed.

The persons are:

(a) a person who lodges a valid notice of opposition under Article 51(1) in relation to the application (as it applies to an application to amend a product specification by virtue of Article 53(2));

(b) a person marketing a product that is, or may be, affected by the amendment of the product specification.

Power to:

(a) quash the decision and (as appropriate) direct the Secretary of State to:

(i) restore the data in the entry for the protected designation of origin, protected geographical indication or traditional speciality guaranteed in the relevant register;

(ii) remove the copy of the amended product specification for the protected designation of origin, protected geographical indication or traditional speciality guaranteed attached to the relevant register and replace it with a copy of the product specification for the protected designation of origin, protected geographical indication or traditional speciality guaranteed that was attached to the relevant register immediately before the Secretary of State decided to approve the application, or

(b) remit the matter to the Secretary of State for reconsideration and fresh decision.

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<p>Decision of the Secretary of State to reject an application submitted under Article 53 to amend a product specification for a protected designation of origin, protected geographical indication or traditional speciality guaranteed.</p>	<p>The persons are: (a) the person who submitted the application; (b) a person marketing a product that is, or may be, affected by the decision not to amend the product specification.</p>	<p>Power to: (a) quash the decision and (as appropriate) direct the Secretary of State: (i) in the case of an amendment to the product specification that is not a temporary amendment: (aa) to make such change to the data in the entry for the protected designation of origin, protected geographical indication or traditional speciality guaranteed in the relevant register as the amendment to the product specification may entail, and (bb) to replace the copy of the product specification for the protected designation of origin, protected geographical indication or traditional speciality guaranteed attached to the relevant register with a copy of the amended product specification, or (ii) in the case of a temporary amendment to the product specification, to make an appropriate entry relating to the temporary amendment to the product specification for the protected designation of origin, protected geographical indication or traditional speciality guaranteed in the relevant register, or (b) remit the matter to the Secretary of State for reconsideration and fresh decision.</p>
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<p>Decision of the Secretary of State under Article 54, on the Secretary of State's own initiative, to cancel the registration of a protected designation of origin, protected geographical indication or traditional speciality guaranteed.</p>	<p>The persons are: (a) a person who lodges a valid notice of opposition under Article 51(1) in relation to the proposed decision (as it applies to the cancellation of a protected designation of origin, protected geographical indication or traditional speciality guaranteed by virtue of Article 7(1) and (4) of Regulation 664/2014);</p>	<p>Power to: (a) quash the decision and direct the Secretary of State to: (i) restore the entry for the protected designation of origin, protected geographical indication or traditional speciality guaranteed in the relevant register, and (ii) reattach to the relevant register a copy of the product specification for</p>
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(b) a person marketing the protected designation of a product that is, or origin, protected geographical may be, affected by the indication or traditional cancellation of the registration speciality guaranteed that of the protected designation of was attached to that origin, protected geographical register immediately before the indication or traditional Secretary of State decided speciality guaranteed. to cancel the registration of the protected designation of origin, protected geographical indication or traditional speciality guaranteed, or

(b) remit the matter to the Secretary of State for reconsideration and fresh decision.

Decision of the Secretary of State to approve a request submitted under Article 54 to cancel the registration of a protected designation of origin, protected geographical indication or traditional speciality guaranteed.

The persons are:

(a) a person who lodges a valid notice of opposition under Article 51(1) in relation to the request (as it applies to a request to cancel the registration of the protected designation of origin, protected geographical indication or traditional speciality guaranteed by virtue of Article 7(1) and (4) of Regulation 664/2014);

(b) a person marketing a product that is, or may be, affected by the cancellation of the registration of the protected designation of origin, protected geographical indication or traditional speciality guaranteed.

Power to:

(a) quash the decision and direct the Secretary of State to:

(i) restore the entry for the protected designation of origin, protected geographical indication or traditional speciality in the relevant register, and

(ii) reattach to the relevant register a copy of the product specification for the protected designation of origin, protected geographical indication or traditional speciality guaranteed that was attached to that register immediately before the Secretary of State decided to cancel the registration of the protected designation of origin, protected geographical indication or traditional speciality guaranteed, or

(b) remit the matter to the Secretary of State for reconsideration and fresh decision.

Decision of the Secretary of State to reject a request submitted under Article 54 to cancel the registration of a protected designation of origin, protected geographical indication or traditional speciality guaranteed.

The persons are:

(a) the person who submitted the request;

(b) a person marketing a product that is, or may be, affected by the decision not to cancel the registration of the protected designation of

Power to:

(a) quash the decision and direct the Secretary of State to:

(i) remove the entry for the protected designation of origin, protected geographical indication or traditional

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origin, protected geographical indication or traditional speciality guaranteed.

speciality guaranteed from the relevant register, and

(ii) remove the copy of the product specification for the protected designation of origin, protected geographical indication or traditional speciality guaranteed attached to the relevant register, or

(b) remit the matter to the Secretary of State for reconsideration and fresh decision.”

- F7** Word in Sch. 2 Pt. 7 inserted (31.12.2020 immediately before IP completion day) by [The Agricultural Products, Food and Drink \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1661\)](#), regs. 1(2)(b), **16(7)(d)(i)**
- F8** Word in Sch. 2 Pt. 7 inserted (31.12.2020 immediately before IP completion day) by [The Agricultural Products, Food and Drink \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1661\)](#), regs. 1(2)(b), **16(7)(d)(ii)**
- F9** Word in Sch. 2 Pt. 7 inserted (31.12.2020 immediately before IP completion day) by [The Agricultural Products, Food and Drink \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1661\)](#), regs. 1(2)(b), **16(7)(d)(iii)**
- F10** Words in Sch. 2 Pt. 7 substituted (31.12.2020 immediately before IP completion day) by [The Agricultural Products, Food and Drink \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1661\)](#), regs. 1(2)(b), **16(7)(e)(i)**
- F11** Words in Sch. 2 Pt. 7 inserted (31.12.2020 immediately before IP completion day) by [The Agricultural Products, Food and Drink \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1661\)](#), regs. 1(2)(b), **16(7)(e)(ii)(aa)**
- F12** Words in Sch. 2 Pt. 7 substituted (31.12.2020 immediately before IP completion day) by [The Agricultural Products, Food and Drink \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1661\)](#), regs. 1(2)(b), **16(7)(e)(ii)(bb)**
- F13** Words in Sch. 2 Pt. 7 substituted (31.12.2020 immediately before IP completion day) by [The Agricultural Products, Food and Drink \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1661\)](#), regs. 1(2)(b), **16(7)(e)(ii)(cc)**

Marginal Citations

- M1** OJ No. L 208, 24.7.1992, p. 1, repealed by Council Regulation (EC) No 510/2006 (OJ No. L 93, 31.3.2006, p. 12).
- M2** The European Commission's register relating to designations of origin and geographical indications for agricultural products and foodstuffs can be accessed electronically from <https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/> . A hard copy of the register as it stood immediately before IP completion day is available for inspection free of charge at the offices of the Department for Environment, Food and Rural Affairs, Second Floor, Seacole Block, 2 Marsham Street, London SW1P 4DF.

Changes to legislation:

There are currently no known outstanding effects for the The Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations 2020, SCHEDULE 2.