

## SCHEDULE 8

Regulation 26

### Commission Delegated Regulation (EU) 2019/33: new provisions

## PART 1

### New Articles 1a and 1b

#### Commencement Information

**II** Sch. 8 Pt. 1 in force at 31.12.2020, see reg. 1(7)

#### *“Article 1a Definitions*

#### In this Regulation:

- (a) ‘the 1990 Act’ means the Food Safety Act 1990;
- (b) ‘the EUWA’ means the European Union (Withdrawal) Act 2018;
- (c) ‘Regulation 607/2009’ means Commission Regulation (EC) No 607/2009 laying down certain detailed rules for the implementation of Council Regulation (EC) No 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products;
- (d) ‘EU Regulation 2019/33’ means Commission Delegated Regulation (EU) 2019/33 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation as it had effect before IP completion day;
- (e) ‘the appropriate authority’ means:
  - (i) in relation to England, the Secretary of State;
  - (ii) in relation to Scotland, the Scottish Ministers;
  - (iii) in relation to Wales, the Welsh Ministers;
- (f) ‘an Article 115(2) approval notice’ means a notice published under the second subparagraph of Article 115(2) of Regulation (EU) No 1308/2013 relating to a decision of the Secretary of State to approve an application to protect a traditional term;
- (g) ‘constituent nation’ means England, Northern Ireland, Scotland or Wales as the case may be;
- (h) ‘country’, in relation to the United Kingdom, means the United Kingdom as a whole and does not mean an individual constituent nation forming part of the United Kingdom;
- (i) ‘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;

**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 8.* (See end of Document for details)

- (j) ‘established protected traditional terms’ means traditional terms within the meaning of Article 112 of Regulation (EU) No 1308/2013 to which Article 54(2) of the EU withdrawal agreement applies;
- (k) ‘EUIA’ means an international agreement made between the European Union and a third country that provides for the protection of a traditional term used in the third country in the European Union;
- (l) ‘FTT’ means the First-tier Tribunal;
- (m) ‘Great Britain’s Traditional Terms Register’ mean the register referred to in Article 25 of Implementing Regulation (EU) 2019/34;
- (n) ‘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 traditional term following the submission of an application under Article 21 of Implementing Regulation (EU) 2019/34 or Article 34 of this Regulation, or a request made under Article 35 of this Regulation, means the person who submitted the application or request;
- (o) ‘the original (protection) applicant’, in relation to a traditional term protected under Article 113 of Regulation (EU) No 1308/2013 following the approval of an application submitted to the Secretary of State under Article 21 of Implementing Regulation (EU) 2019/34, means the person who submitted that application;
- (p) ‘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;
- [<sup>F1</sup>(q) ‘third country means—
  - (i) for the purposes of the definition of ‘EUIA’ in point (k), Article 32c and Annex A1 (other than the reference in paragraph (ii)), any country other than:
    - (aa) any part of the British Islands, or
    - (bb) a member State;
  - (ii) for the purposes of the reference in column 2 of row 5 of the Types Table in Part 3 of Annex A1, any country other than any part of the British Islands;
  - (iii) for all other purposes, any country other than the United Kingdom, and includes:
    - (aa) the Bailiwick of Guernsey;
    - (bb) the Bailiwick of Jersey;
    - (cc) the Isle of Man;]
- (r) ‘third country standard amendment’ has the meaning given by Article 14(2c);
- (s) ‘third country temporary amendment’ has the meaning given by Article 14(2d);
- (t) ‘the TMA’ means the Trade Marks Act 1994;
- (u) ‘the Types Table’ means the table in Part C of Annex A1;
- (v) ‘UK standard amendment’ has the meaning given by Article 14(2a);
- (w) ‘UK temporary amendment’ has the meaning given by Article 14(2b).

#### *Article 1b*

##### *Definitions: types of traditional term*

In Article 32a and Annex A1 any reference to:

- (a) ‘a type 1 traditional term’ means a traditional term of a type described in column 2 of row 1 of the Types Table;

- (b) ‘a type 2A traditional term’ means a traditional term of the type described in column 2 of row 2 of the Types Table to which paragraph 1 or 2 in column 3 of that row applies;
- (c) ‘a type 2B traditional term’ means a traditional term 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 traditional term’ means a traditional term of the type described in column 2 of row 3 of the Types Table to which paragraph 1 or 2 in column 3 of that row applies;
- (e) ‘a type 3B traditional term’ means a traditional term 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 traditional term’ means a traditional term of the type described in column 2 of row 4 of the Types Table to which paragraph 1 or 2 in column 3 of row 3 of that table applies;
- (g) ‘a type 4B traditional term’ means a traditional term of the type described in column 2 of row 4 of the Types Table to which the provisions in column 4 of row 3 of that table apply;
- (h) ‘a type 5A traditional term’ means a traditional term of the type described in column 2 of row 5 of the Types Table to which paragraph 1 or 2 in column 3 of row 3 of that table applies;
- (i) ‘a type 5B traditional term’ means a traditional term of the type described in column 2 of row 5 of the Types Table to which the provisions in column 4 of row 3 of that table apply.”

**F1** Words in [Sch. 8 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\(10\)\(a\)](#)

## PART 2

### Article 18: new paragraphs 1 to 1n

#### Commencement Information

**I2** Sch. 8 Pt. 2 in force at 31.12.2020, see [reg. 1\(7\)](#)

“**1.** Paragraphs 1a to 1n apply to an application for a UK temporary amendment to a product specification for a protected designation of origin or protected geographical indication (‘a UK temporary amendment application’).

**1a.** A UK temporary amendment application must be made to the Secretary of State.

**1b.** The procedures laid down in Articles 94 and 97 to 99 of Regulation (EU) No 1308/2013 do not apply to a UK temporary amendment application.

**1c.** A UK temporary amendment application may be made by a group of producers having a legitimate interest in the relevant protected designation of origin or protected geographical indication unless the application to register the designation of origin or geographical indication was made by a single applicant, in which case the temporary amendment application may be made by that person.

**1d.** If a UK temporary amendment application is not made by the original (protection) applicant, the Secretary of State must give the original (protection) applicant the opportunity to make comments on the application if that applicant still exists.

**1e.** A UK temporary amendment application must:

**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 8. (See end of Document for details)

- (a) describe the amendment applied for,
- (b) be accompanied by a copy of the product specification and, where relevant, the single document, showing the proposed temporary amendment,
- (c) compare for each amendment:
  - (i) the original product specification against the proposed modified product specification, and
  - (ii) where relevant, the original single document against the proposed modified single document,
- (d) provide an explanation of why the temporary amendment is needed, and
- (e) provide an estimate, where this is possible, of how long it is anticipated that the temporary amendment will be needed for.

**1f.** A UK temporary amendment application that does not comply with paragraph 1e is inadmissible.

**1g.** Where a UK temporary amendment application is inadmissible, the Secretary of State must inform the applicant that the application is inadmissible as soon as reasonably practicable after receiving the application.

**1h.** The Secretary of State may approve a UK temporary amendment application if the Secretary of State considers that a temporary amendment to the product specification is appropriate.

**1i.** Where a UK temporary amendment application is approved, the Secretary of State must specify the period during which the temporary amendment is to apply.

**1j.** The period during which an approved temporary amendment is to apply may be specified by reference to a set period of time or may be specified by reference to the happening of a specified event.

**1k.** The Secretary of State, in deciding the period for which an approved temporary amendment is to apply, must take into account the conditions prevailing at the time the decision to approve the application is taken and, where possible, the period for which the Secretary of State anticipates that those conditions will continue.

**1l.** The Secretary of State may, on an application by a group of producers or single applicant who made a UK temporary amendment application under paragraph 1a, as read with paragraph 1c, extend the period during which a relevant approved temporary amendment is to apply on one or more occasions if the Secretary of State considers that it is appropriate to do so having regard to the conditions prevailing at the time that decision is made.

**1m.** After making a decision on a UK temporary amendment application, the Secretary of State must publish in such manner as appears appropriate to the Secretary of State from time to time:

- (a) a notice:
  - (i) informing the applicant, the original (protection) applicant (if different) and the public of the decision made in relation to the application and the reasons for that decision, and
  - (ii) providing information about the right to appeal under Article 39a against the decision and the period within which an appeal may be made, and
- (b) where the application is approved, details of the approved temporary amendment and the period during which that temporary amendment is to apply.

**1n.** Where a UK temporary amendment application is approved and the period during which the temporary amendment is to apply is extended, the Secretary of State must, on each occasion the period is extended, publish, in such manner as appears appropriate to the Secretary of State from time to time, a notice informing the applicant, the original (protection) applicant (if different) and the public that the period has been extended and the reasons for that decision and specifying the extended period during which the temporary amendment is to apply.”

## PART 3

### New Articles 32a and 32b

#### Commencement Information

**I3** Sch. 8 Pt. 3 in force at 31.12.2020, see reg. 1(7)

#### “Article 32a

##### *Transitional provision: relationship with trade marks*

**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 not respect the definition in Article 112 of Regulation (EU) No 1308/2013 and the conditions of use in Article 113 of that Regulation in relation to a category A traditional term.

**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 not respect the definition in Article 112 of Regulation (EU) No 1308/2013 and conditions of use in Article 113 of that Regulation in relation to a category B traditional term, 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 2B traditional term:

(aa) the international agreement referred to in paragraph (c) of column 2 of row 2 of the Types Table enters into force [<sup>F2</sup>or the bridging arrangements referred to in that column are made], and

(bb) the entry into force of the international agreement [<sup>F3</sup>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 traditional term:

(aa) the Secretary of State publishes an Article 115(2) approval notice relating to the traditional term, and

(bb) the Article 115(2) 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 32b(1) and modified by Article 32b(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:

**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 8.* (See end of Document for details)

- (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 does not, or will not, if used, respect the definition in Article 112 of Regulation (EU) No 1308/2013 and conditions of use in Article 113 of that Regulation in relation to a category B traditional term, and
- (c) in the case of a type 3B, 4B or 5B traditional term, the Secretary of State publishes an Article 115(2) approval notice relating to the traditional term 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 traditional term 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 traditional term.

**5.** As regards paragraphs 1 and 2, a column 5 date does not apply in relation to a type 2A, 3A or 4A traditional term where the EUIA referred to in paragraph (b) in column 2 of the row of the Types Table relating to the traditional term 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 traditional term

**6.** As regards paragraph 3, a column 5 date does not apply in relation to a type 2B, 3B or 4B traditional term where the EUIA referred to in paragraph (b) in column 2 of the row of the Types Table relating to the traditional term 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 traditional term.

**7.** Where a traditional term falls within the definition of more than one type of traditional term in Article 1b, 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 traditional term.

**8.** In a case of a category A or B traditional term that is not on Great Britain's Traditional Terms Register at the time an assessment is carried out under paragraph 1, 2 or 3, the traditional term is to be treated, for the purpose of the assessment, as being a protected traditional term in determining whether the use of the trade mark will contravene Article 113 in relation to that traditional term.

**9.** A trade mark that could be used under Article 32(3) of EU Regulation 2019/33 in the United Kingdom 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 not respect the definition in Article 112 of Regulation (EU) No 1308/2013 and conditions of use in Article 113 of that Regulation in relation to a traditional term 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 32(3) of EU Regulation 2019/33 immediately before IP completion day from being renewed after IP completion day:

- (a) notwithstanding that the use of the renewed trade mark would not respect the definition in Article 112 of Regulation (EU) No 1308/2013 and conditions of use

in Article 113 of that Regulation in relation to a traditional term 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) an established protected traditional term entered on Great Britain's Traditional Terms Register pursuant to Article 39;
- (b) a traditional term entered on Great Britain's Traditional Terms Register by the Secretary of State following a decision by the Secretary of State to approve an application to protect the traditional term submitted under Article 21 of Implementing Regulation (EU) 2019/34;
- (c) a traditional term entered on Great Britain's Traditional Terms Register by the Secretary of State under Article 25(3) of Implementing Regulation (EU) 2019/34.

**12.** In this Article:

- <sup>F4</sup>(a) .....
- (b) 'a category A traditional term' means a type 1, 2A, 3A, 4A or 5A traditional term;
- (c) 'a category B traditional term' means a type 2B, 3B, 4B or 5B traditional term;
- (d) 'column 5 date', in relation to a traditional term that is a category A or B traditional term, means the date specified, or provided for, in column 5 of the Types Table in the row relating to the relevant type of traditional term;
- (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 32b*

#### *Application and modification of trade mark provisions*

**1.** For the purpose of Article 32a, 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 32a(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 32b(1) of Commission Delegated Regulation (EU) 2019/33 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards



applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation.’;

- (ii) in subsection (5), for ‘grounds of invalidity’ there were substituted ‘ground for invalidity specified in Article 32a(3) of Commission Delegated Regulation (EU) 2019/33 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 32a(3) of Commission Delegated Regulation (EU) 2019/33’;
  - (ii) the second paragraph were omitted;
- (d) section 77(1) applies as if, at the end there were inserted ‘as applied by Article 32b(1) of Commission Delegated Regulation (EU) 2019/33’.

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 32a(3);
- (b) an appeal to an appointed person from a decision of the registrar in relation to an application referred to in paragraph (a).”

<b>F2</b>	Words in Sch. 8 Pt. 3 inserted (31.12.2020 immediately before IP completion day) by <a href="#">The Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1661)</a> , regs. 1(2)(b), <b>16(10)(b)(i)(aa)</b>
<b>F3</b>	Words in Sch. 8 Pt. 3 inserted (31.12.2020 immediately before IP completion day) by <a href="#">The Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1661)</a> , regs. 1(2)(b), <b>16(10)(b)(i)(bb)</b>
<b>F4</b>	Words in Sch. 8 Pt. 3 omitted (31.12.2020 immediately before IP completion day) by virtue of <a href="#">The Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1661)</a> , regs. 1(2)(b), <b>16(10)(b)(ii)</b>

## PART 4

### Chapter 3: new Section 6

#### Commencement Information

- I4** Sch. 8 Pt. 4 in force at 31.12.2020, see [reg. 1\(7\)](#)

“SECTION 6

*Appeals*

*Article 39a*

*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 Annex A2.
2. Such an appeal may be made:
  - (a) in all cases, by a person or third country authority specified in the corresponding entry in column 2 of the table in Annex A2;
  - (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;
  - (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 column 3 of the table in Annex A2.
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 Section and Annex A2 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 Annex A2 does not prevent an entry recorded on Great Britain's Traditional Terms 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 39b

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

1. The Secretary of State may consider a decision specified in column 1 of the table in Annex A2 ('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 the original decision was made.
2. Paragraph 1 applies even though an appeal has been made 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 appellants, 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 appellants, 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 5

### New Article 61

#### **Commencement Information**

**I5** Sch. 8 Pt. 5 in force at 31.12.2020, see [reg. 1\(7\)](#)

#### *"Article 61*

##### *Transitional measures*

1. Without prejudice to Article 41 of the EU withdrawal agreement, products to which paragraphs 2 and 3 apply may be marketed until stocks are exhausted.
2. This paragraph applies to grapevine products that:
  - (a) were labelled in the United Kingdom but not placed on the market in the United Kingdom or a member State before 14th January 2019,
  - (b) do not comply with the requirements in force under this Regulation, and
  - (c) comply with the requirements of Regulation 607/2009 as those requirements had effect immediately before Regulation 607/2009 was repealed by EU Regulation 2019/33.

**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 8. (See end of Document for details)

3. This paragraph applies to grapevine products that:
  - (a) were labelled in the United Kingdom but not placed on the market in the United Kingdom or a member State before IP completion day,
  - (b) do not comply with the requirements in force under this Regulation, and
  - (c) comply with the requirements of EU Regulation 2019/33 as it had effect immediately before IP completion day.
4. Products to which paragraph 5 applies may be marketed:
  - (a) before the relevant day, and
  - (b) in relation to stocks of such products in existence immediately before the relevant day, on and after the relevant day until stocks are exhausted.
5. This paragraph applies to grapevine products that:
  - (a) were labelled without being placed on the market, in the United Kingdom on or after IP completion day and before the relevant day,
  - (b) do not comply with the requirements in force under this Regulation, and
  - (c) comply with the requirements of EU Regulation 2019/33 as it had effect immediately before IP completion day.
6. In this Article:
  - (a) ‘making available on the market’ has the meaning given in Article 40(a) of the EU withdrawal agreement;
  - (b) ‘placed on the market’ means the first making available on the market of a grapevine product;
  - (c) ‘the relevant day’ means the day that falls 21 months after the day on which IP completion day falls.”

## **PART 6**

### New Annexes A1 and A2

#### **Commencement Information**

**I6** Sch. 8 Pt. 6 in force at 31.12.2020, see reg. 1(7)

#### *“ANNEX A1*

Types of traditional term to which Article 32a applies

## **PART A**

### Interpretation

1. In the table in Part C:
  - (a) ‘EU Regulation 2019/34’ means Commission Implementing Regulation (EU) 2019/34 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine

sector, the objection procedure, amendments to product specifications, the register of protected names, cancellation of protection and use of symbols, and of Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards an appropriate system of checks as it had effect before IP completion day;

- (b) ‘the European Commission’s Traditional Terms Register’ means the register maintained by the European Commission under Article 25 of EU Regulation 2019/34;
- (c) ‘grapevine product’ means a product referred to in point 1, 3 to 6, 8, 9, 11, 15 or 16 of Part 2 of Annex 7 to Regulation (EC) No 1308/2013;
- (d) ‘the paragraph 1 trade mark application’ means the application to register a trade mark referred to in Article 32a(1);
- (e) ‘the relevant EUIA-based date’ means the date determined in accordance with Part B;
- (f) ‘the relevant pre-IP completion day legislation’ means:
  - (i) in the case of an application to register a traditional term submitted to the European Commission under Regulation 607/2009, Article 29 of that Regulation;
  - (ii) in the case of an application to register a traditional term submitted to the European Commission under EU Regulation 2019/34, Article 21 of that Regulation;
- (g) ‘the relevant trade mark application’ means the application to register a trade mark referred to in Article 32a(2) or (3)(a), as relevant.

## PART B

### The relevant EUIA-based date

**2.** In the table in Part C, 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 traditional term.

**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 traditional term contained priority provisions that applied to the traditional term, the relevant EUIA-based date is the priority date provided for in the EUIA that applied to that traditional term.

**4.** In a case of a type 2A, 2B, 3A or 3B traditional term to which paragraph 3 does not apply, the relevant EUIA-based date is:

- (a) in a case where the traditional term 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 traditional term 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;

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- (c) in a case where the traditional term 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 traditional term 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 traditional term 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 4A or 4B traditional term to which paragraph 3 does not apply and for which a request, or application, for protection or assessment (however described) was submitted before IP completion day in accordance with provisions in the EUIA, the relevant EUIA-based date is the date on which the request, or application, for protection or assessment was submitted in accordance with the EUIA.
6. Any reference in this Part to:
- (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 traditional terms 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 traditional term protected in the European Union immediately before IP completion day pursuant to an EUIA, means that the provisions in the EUIA providing for the traditional term 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 traditional term;
    - (ii) an assessment to be carried out under the EUIA in relation to the traditional term.

## PART C

### Types of traditional term (the Types Table)

<i>Column 1</i> <i>Row No.</i>	<i>Column 2</i> <i>Description of the traditional term</i>	<i>Column 3</i> <i>Type A provisions</i>	<i>Column 4</i> <i>Type B provisions</i>	<i>Column 5</i> <i>The column 5 date</i>
1.	Established protected traditional terms.	Not applicable.	Not applicable.	<p>1. In relation to a traditional term listed in Annex 3 to Commission Regulation (EC) No 753/2002 laying down certain rules for applying Council Regulation (EC) No 1493/1999 as regards the description, designation, presentation and protection of certain wine sector products<sup>MI</sup> when that Regulation was published in the Official Journal of the European Union, 4th May 2002.</p> <p>2. In relation to a traditional term added to Annex 3 to Regulation (EC) No 753/2002 after 4th May 2002, the date on which the addition of the traditional term to that Annex first applies.</p> <p>3. In any other case, the date on which the application that resulted in the first registration of the traditional term was submitted</p>

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to the European Commission under the relevant pre-IP completion day legislation.

2. A traditional term that: (a) is used in relation to a grapevine product produced in a third country, (b) was protected in the European Union immediately before IP completion day pursuant to an EUIA to which the European Union and the third country were contracting parties, and [F5(c) must 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 traditional term that is in Great Britain's Traditional Terms Register before the day on which the paragraph 1 trade mark application is accepted or refused and is entered in that register pursuant to Article [F632c(1) or] 39. [F72. A traditional term that is not in Great Britain's Traditional Terms 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, before the day on which the paragraph 1 trade
- [F8A traditional term that is not in Great Britain's Traditional Terms 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 traditional term in relation to the EUIA referred to in point (b) of column 2.



mark application  
is accepted or  
refused.]

3. A traditional term that: (a) is used in relation to a grapevine product produced 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 traditional term that is (a) that is not in Great Britain's Traditional Terms Register before the day on which the paragraph 1 trade mark application is accepted or refused and is entered in that register following the approval of an application to register the traditional term submitted to the Secretary of State under Article 21 of Implementing Regulation (EU) 2019/34 during the relevant period.
2. A traditional term: (a) that is not in Great Britain's Traditional Terms Register before the day on which the paragraph 1 trade mark application is accepted or refused, (b) for which an application to register the traditional term is submitted to the Secretary of State under Article 21 of Implementing Regulation (EU) 2019/34 during the relevant period, and
- A traditional term: The relevant EUIA-based date that applies to the traditional term in relation to the EUIA referred to in point (b) of column 2.
- The relevant EUIA-based date that applies to the traditional term in relation to the EUIA referred to in point (b) of column 2.
1. A traditional term: (a) that is not in Great Britain's Traditional Terms Register when the relevant trade mark application is accepted, and (b) for which an application to register the traditional term is submitted to the Secretary of State under Article 21 of Implementing Regulation (EU) 2019/34 during the relevant period and that application: (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 a notice published by the Secretary of State under the second subparagraph of Article 115(2) of Regulation (EU) No 1308/2013 relating to the application to register the traditional term is not published before the relevant trade mark application is accepted.

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(c) for which an Article 115(2) approval notice relating to the application is published before the day on which the paragraph 1 trade mark application is accepted or refused.

4. A traditional term: See the entry in row 3 of this column. See the entry in row 3 of this column. The relevant EUIA-based date that applies to the traditional term in relation to the EUIA referred to in point (b) of column 2.
- (a) that is used in relation to a grapevine product produced in a third country,
- (b) for which an assessment relating to the protection of the traditional term 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 traditional term under an EUIA, and
- (c) for which no decision was made pursuant to the EUIA before IP completion day as to whether the traditional term should be protected in the European Union.
5. A traditional term: See the entry in row 3 of this column. See the entry in row 3 of this column. The date on which the application referred to in point (b) of column 2 was submitted to the European Commission

<p>(b) for which an application to register the traditional term was submitted to the European Commission under Article 29 of Regulation 607/2009, or Article 21 of EU Regulation 2019/34, before IP completion day that was neither refused nor resulted in traditional term being added to the European Commission's Traditional Terms Register before IP completion day.</p>	<p>under the relevant pre-IP completion day legislation.</p>
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ANNEX A2

Appeals

<b>Column 1 Decision</b>	<b>Column 2 Persons and third country authorities who may appeal against the decision</b>	<b>Column 3 FTT powers</b>
<p>Decision of the Secretary of State to approve an application submitted under Article 21 of Implementing Regulation (EU) 2019/34 to protect a traditional term.</p>	<p>The persons are:                      (a) a person who submits a duly substantiated objection to the application under Article 22 of Implementing Regulation (EU) 2019/34;                      (b) a person marketing a product that is, or may be, affected by the protection of the traditional term.</p>	<p>Power to:                      (a) quash the decision and direct the Secretary of State to remove the entry for the traditional term from Great Britain's Traditional Terms Register, or                      (b) remit the matter to the Secretary of State for reconsideration and fresh decision.</p>
<p>Decision of the Secretary of State to reject an application submitted under Article 21 of Implementing Regulation (EU) 2019/34 to protect a traditional term.</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 protect the traditional term.</p>	<p>Power to:                      (a) quash the decision and direct the Secretary of State to register the traditional term by making an entry for the traditional term in Great Britain's Traditional Terms Register, recording the</p>

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		data specified in Article 25(1) of Implementing Regulation (EU) 2019/34 in that register, 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 34 to modify a traditional term.	The persons are: (a) a person who submits an objection to the modification of the traditional term under Article 22 of Implementing Regulation (EU) 2019/34 (as it applies to a request to modify a traditional term by virtue of the first paragraph of Article 27 of Implementing Regulation (EU) 2019/34); (b) a person marketing a product that is, or may be, affected by the modification of the traditional term.	Power to: (a) quash the decision and direct the Secretary of State to restore the data in the entry for the traditional term in Great Britain's Traditional Terms Register, 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 34 to modify a traditional term.	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 modify the traditional term.	Power to: (a) quash the decision and direct the Secretary of State to make such change to the data in the entry for the traditional term in Great Britain's Traditional Terms Register as the modification of the traditional terms entails, 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 35 to cancel the protection of a traditional term.	The persons are: (a) a third country authority which, or the applicant (within the meaning of Article 29(1) of Implementing Regulation (EU) 2019/34) who, submits observations to the Secretary of State in relation to the cancellation request having been invited to do so by the Secretary of State under the first subparagraph of Article 29(1) of Implementing Regulation (EU) 2019/34; (b) a person who submits an objection in relation to the	Power to: (a) quash the decision and direct the Secretary of State to restore the entry for the traditional term in Great Britain's Traditional Terms Register, or (b) remit the matter to the Secretary of State for reconsideration and fresh decision.

request in accordance with the objection in Section 2 of Chapter III (as it applies in relation to a request to cancel the protection of a traditional term by virtue of the second paragraph of Article 35);  
(c) a person marketing a product that is, or may be, affected by the cancellation of the protection of the traditional term.

Decision of the Secretary of State to reject a request submitted under Article 35 to cancel the protection of a traditional term.	The persons are: (a) the person who submitted the request; (b) a third country authority which, or the applicant (within the meaning of Article 29(1) of Implementing Regulation (EU) 2019/34) who, submits observations to the Secretary of State in relation to the cancellation request having been invited to do so by the Secretary of State under the first subparagraph of Article 29(1) of Implementing Regulation (EU) 2019/34; (c) a person marketing a product that is, or may be, affected by the continued protection of the traditional term.	Power to: (a) quash the decision and direct the Secretary of State to remove the entry for the traditional term from Great Britain's Traditional Terms Register, or (b) remit the matter to the Secretary of State for reconsideration and fresh decision.”
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- F5** Words in Sch. 8 Pt. 6 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(10)(c)(i)**
- F6** Words in Sch. 8 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(10)(c)(ii)(aa)**
- F7** Words in Sch. 8 Pt. 6 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(10)(c)(ii)(bb)**
- F8** Words in Sch. 8 Pt. 6 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(10)(c)(iii)**

#### Marginal Citations

- M1** OJ No. L 118, 4.5.2002, p. 1, repealed by Commission Regulation (EC) No 607/2009 (OJ No. L 193, 24.7.2009, p. 60). Last amended before its repeal by Commission Regulation (EC) No 1471/2007 (OJ No. L 329, 14.12.2007, p. 9).

## PART 7

### Annex 1: new Part A

#### Commencement Information

I7 Sch. 8 Pt. 7 in force at 31.12.2020, see [reg. 1\(7\)](#)

## “PART A

### Terms referred to in Article 41(1)

Terms concerning sulphites/sulfites:

‘sulphites’ or ‘sulfites’

‘sulphur dioxide’ or ‘sulfur dioxide’

Terms concerning eggs and egg-based products:

‘egg’

‘egg protein’

‘egg product’

‘egg lysozyme’

‘egg albumin’

Terms concerning milk and milk-based products:

‘milk’

‘milk products’

‘milk casein’ or ‘milk protein’”

## PART 8

### New Annexes 2 and 3

#### Commencement Information

**18** Sch. 8 Pt. 8 in force at 31.12.2020, see [reg. 1\(7\)](#)

#### “ANNEX 2

Words referred to in point (b) of the second subparagraph of Article 46(3)

Words authorised instead of ‘producer’: ‘processor’ or ‘winemaker’

Words authorised instead of ‘produced by’: ‘processed by’ or ‘made by’

#### ANNEX 3

Indication of the sugar content

## PART A

List of terms referred to in Article 47(1), to be used for sparkling wine, aerated sparkling wine, quality sparkling wine or quality aromatic sparkling wine

<i>Terms</i>	<i>Conditions of use</i>
extra dry	If its sugar content is between 12 and 17 grams per litre.
dry	If its sugar content is between 17 and 32 grams per litre.
medium dry	If its sugar content is between 32 and 50 grams per litre.
mild, sweet	If its sugar content is greater than 50 grams per litre.

## PART B

List of terms referred to in Article 52(1), to be used for products other than those listed in Part A

<i>Terms</i>	<i>Conditions of use</i>
dry	If its sugar content does not exceed: — 4 grams per litre, or

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	<p>— 9 grams per litre, provided that the total acidity expressed as grams of tartaric acid per litre is not more than 2 grams below the residual sugar content.</p>
medium dry	<p>If its sugar content exceeds the maximum permitted but does not exceed:</p> <p>— 12 grams per litre, or</p> <p>— 18 grams per litre, provided that the total acidity expressed as grams of tartaric acid per litre is not more than 10 grams below the residual sugar content.</p>
medium, medium sweet	<p>If its sugar content exceeds the maximum permitted but does not exceed 45 grams per litre.</p>
sweet	<p>If its sugar content is at least 45 grams per litre.”</p>

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**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 8.