

SCHEDULE 3

Regulation 13

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

PART 1

Chapter 3: new Section 6

“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 8.
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 Annex 8;
 - (b) in the case of a decision affecting an application submitted by the authorities of a third country, 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 8.
5. The Secretary of State may consider a decision specified in column 1 of the table in Annex 8 afresh (“the original decision”) 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.
6. Paragraph 5 applies even though an appeal has been made in respect of the original decision.
7. 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 person who made the appeal against the decision 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

Status: This is the original version (as it was originally made).

from time to time a notice informing the person who made the appeal against the decision and the public of that decision.

8. If the Secretary of State makes the same decision again, the appeal to the FTT restarts.
9. If the Secretary of State makes a different decision, the appeal to the FTT ceases unless the FTT directs otherwise.

Article 39b

Appeals: applications to protect traditional terms

1. Where an appeal is made to the FTT relating to a decision to recognise a traditional term and the Secretary of State has made an entry in the United Kingdom's Traditional Terms Register registering the traditional term, the entry in the register is to be maintained but is in suspense and must be marked to indicate that it is in suspense.

2. The suspension provided for in paragraph 1 continues until the FTT has determined the appeal and:

- (a) the marking relating to the suspension of the entry is removed from the register by the Secretary of State in a case where the FTT dismisses the appeal;
- (b) the entry relating to the traditional term is removed from the register by the Secretary of State in a case where the FTT determines that the decision must be quashed and directs the Secretary of State to remove the entry relating to the traditional term from the register;
- (c) the marking relating to the suspension of the entry is removed from the register by the Secretary of State in a case where the FTT remits the matter to the Secretary of State for reconsideration and fresh decision and the Secretary of State, following such reconsideration, decides to approve the application and maintain the entry on the register relating to the traditional term;
- (d) the entry relating to the traditional term is removed from the register by the Secretary of State in a case where the FTT remits the matter to the Secretary of State for reconsideration and fresh decision and the Secretary of State, following such reconsideration, decides to reject the application relating to the geographical indication.

3. 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 applicant and the public of that fresh decision;
- (b) the provisions of this Section and Annex 8 apply to the fresh decision made by the Secretary of State.

4. After making a change to the United Kingdom's Traditional Terms Register of the type specified in points (a) to (d) of paragraph 2, the Secretary of State must publish in such manner as appears appropriate to the Secretary of State from time to time a notice informing the applicant and the public of the action taken.

5. Where an appeal is made to the FTT relating to a decision to recognise a traditional term and the Secretary of State has not made an entry in the United Kingdom's Traditional Terms Register, the Secretary of State must not make an entry in the register until the FTT has determined the appeal and any necessary consequent action or decision has been taken by the Secretary of State.

Article 39c

Appeals: applications to modify traditional terms

1. Paragraph 2 applies where an appeal is made to the FTT relating to a decision of the Secretary of State to approve an application to modify a traditional term and the Secretary of State has not updated the entry in the United Kingdom's Traditional Terms Register relating to it pursuant to Article 27(2) of Implementing Regulation (EU) 2019/34.

2. Until the FTT has determined the appeal and any necessary consequent action or decision has been taken by the Secretary of State, the entry in the United Kingdom's Traditional Terms Register relating to the traditional term must be maintained without modification but the entry in the register must be marked to indicate that an appeal relating to the modification of the traditional term is pending.

3. Paragraph 4 applies where an appeal is made to the FTT relating to a decision of the Secretary of State to approve an application to modify a traditional term and the Secretary of State has updated the entry in the United Kingdom's Traditional Terms Register.

4. Until the FTT has determined the appeal and any necessary consequent action or decision has been taken by the Secretary of State, the previous entry in the United Kingdom's Traditional Terms Register is to be restored but the entry in the register must be marked to indicate that an appeal relating to the modification of the traditional term is pending.

5. Where an appeal is made to the FTT relating to a decision of the Secretary of State to reject an application to modify a traditional term, the existing entry in the United Kingdom's Traditional Terms Register is to be maintained until the FTT has determined the appeal and any necessary consequent action or decision has been taken by the Secretary of State, but the entry must be marked to indicate that an appeal relating to an application to modify the traditional term is pending.

Article 39d

Appeals: applications to cancel the protection of a traditional term

1. Where an appeal is made to the FTT relating to a decision of the Secretary of State to cancel the protection of a traditional term and the Secretary of State has not removed the entry from the United Kingdom's Traditional Terms Register, the entry in the register is to be maintained but must be marked to indicate that an appeal relating to the cancellation of the entry is pending until the FTT has determined the appeal and any necessary consequent action or decision has been taken by the Secretary of State.

2. Where an appeal has been made to the FTT relating to a decision of the Secretary of State to cancel the protection of a traditional term and the Secretary of State has removed the entry in the United Kingdom's Traditional Terms Register, the entry in the register is to be restored but must be marked to indicate that an appeal relating to the cancellation of the entry is pending until the FTT has determined the appeal and any necessary consequent action or decision has been taken by the Secretary of State.

3. Where an appeal has been made to the FTT relating to a decision of the Secretary of State not to cancel the protection of a traditional term, the entry in the United Kingdom's Traditional Terms Register relating to the traditional term must be marked to indicate that an appeal relating to the cancellation of the entry is pending until the FTT has determined the appeal and any necessary consequent action or decision has been taken by the Secretary of State.”

Status: This is the original version (as it was originally made).

PART 2

New Annex 8

“ANNEX 8

Appeals

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Decision	Persons who may appeal against the decision	FTT powers
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>The persons are:</p> <p>(a) a person who submitted an objection to the application to register the traditional term under Article 22 of Implementing Regulation (EU) 2019/34;</p> <p>(b) a person marketing a product that is, or may be, affected by the registration of the traditional term.</p>	<p>Power to:</p> <p>(a) quash the decision and (if appropriate) direct the Secretary of State to remove the entry relating to the traditional term from the United Kingdom’s Traditional Terms Register;</p> <p>(b) remit the matter to the Secretary of State for reconsideration and fresh decision.</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>The persons are:</p> <p>(a) the person who submitted the application to protect the traditional term;</p> <p>(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:</p> <p>(a) quash the decision and direct the Secretary of State to add an entry relating to the traditional term on the United Kingdom’s Traditional Terms Register;</p> <p>(b) remit the matter to the Secretary of State for reconsideration and fresh decision.</p>
Decision of the Secretary of State to approve an application submitted under Article 34 to modify a traditional term	<p>The persons are:</p> <p>(a) a person who submitted an objection to the application to register the traditional term under Article 22 of Implementing Regulation (EU) 2019/34 (as it applies to modification applications by virtue of the first paragraph of Article 27 of Implementing Regulation (EU) 2019/34);</p>	<p>Power to:</p> <p>(a) quash the decision and (if appropriate) direct the Secretary of State to restore the entry relating to the traditional term on the United Kingdom’s Traditional Terms Register;</p> <p>(b) remit the matter to the Secretary of State for</p>

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Decision	Persons who may appeal against the decision	FTT powers
	(b) a person marketing a product that is, or may be, affected by the modification of the traditional term.	reconsideration and fresh decision.
Decision of the Secretary of State to reject an application submitted under Article 34 to modify a traditional term	<p>The persons are:</p> <p>(a) the person who submitted the application to modify the traditional term;</p> <p>(b) a person marketing a product that is, or may be, affected by the decision to reject the application to modify the traditional term.</p>	<p>Power to:</p> <p>(a) quash the decision and direct the Secretary of State to record the new specifications for the traditional term on the United Kingdom’s Traditional Terms Register;</p> <p>(b) remit the matter to the Secretary of State for reconsideration and fresh decision.</p>
Decision of the Secretary of State to approve an application submitted under Article 35 to cancel the protection of a traditional term	<p>The persons are:</p> <p>(a) a person who submitted an objection in relation to the application to cancel the traditional term under the first subparagraph of Article 29(1) of Implementing Regulation (EU) 2019/34);</p> <p>(b) a person marketing a product that is, or may be, affected by the cancellation of the protection of the traditional term.</p>	<p>Power to:</p> <p>(a) quash the decision and (if appropriate) direct the Secretary of State to restore the entry relating to the traditional term on the United Kingdom’s Traditional Terms Register,</p> <p>(b) remit the matter to the Secretary of State for reconsideration and fresh decision.</p>
Decision of the Secretary of State to reject an application submitted under Article 35 to cancel the protection of a traditional term	<p>The persons are:</p> <p>(a) the person who submitted the application to cancel the protection of the traditional term;</p> <p>(b) a person marketing a product that is, or may be, affected by the maintenance of the protection of the traditional term.</p>	<p>Power to:</p> <p>(a) quash the decision and direct the Secretary of State to remove the entry relating to the traditional term from the United Kingdom’s Traditional Terms Register;</p> <p>(b) remit the matter to the Secretary of State for reconsideration and fresh decision.”</p>