PROSPECTIVE

[X1SCHEDULE 1

Regulation 3

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

Editorial Information

X1 This statutory instrument was made under a procedure whereby it ceases to have effect at the end of the period of 28 days beginning with the day on which it was made unless, during that period, the instrument was approved by a resolution of each House of Parliament. It was not approved by Parliament within that period and so has ceased to have effect.

PART 1

New Article 3a

"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;
- (l) 'a type 7A designation of origin or geographical indication' means a designation of origin or geographical indication of the type described in column 2 of row 7 of the Types Table to which paragraph 1 or 2 of column 3 of row 4 of that table applies;
- (m) 'a type 7B designation of origin or geographical indication' means a designation of origin or geographical indication of the type described in column 2 of row 7 of the Types Table to which the provisions in column 4 of row 4 of that table apply."

New Articles 14a and 14b

"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 exit 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 exit 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, and
 - (bb) the entry into force of the international agreement 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 a 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 exit 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, 6B or 7B 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 paragraph 1 or 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.** A trade mark that could be used under Article 14(2) of EU Regulation 1151/2012 M1 immediately before exit day and could be renewed pursuant to that provision may continue to be used and renewed:
 - (a) notwithstanding that the use of the trade mark would contravene Article 13(1) 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.

- **9.** Where paragraph 8 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 the United Kingdom's PDOs and PGIs Register by the Secretary of State under Article 11(2);
 - (b) an established protected designation of origin or an established protected geographical indication entered on the United Kingdom's PDOs and PGIs Register pursuant to Article 16;
 - (c) a designation of origin or geographical indication entered on the United Kingdom'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.

10. In this Article:

- (a) 'an application to register a trade mark' means an application to register a trade mark filed under the TMA;
- (b) 'a category A designation of origin or geographical indication' means a type 1, 2A, 3A, 4A, 5A, 6A or 7A designation of origin or geographical indication;
- (c) 'a category B designation of origin or geographical indication' means a type 2B, 3B, 4B, 5B, 6B or 7B designation of origin or geographical indication;
- (d) 'the 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 specified, or provided for, 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 M2 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 M3 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 to the TMA.
- 11. 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 exit day' is to an application that was neither refused, nor resulted in the registration of the trade mark that is the subject of the application, before exit day;
 - (c) a trade mark includes a reference to:
 - (i) a collective mark as defined in section 49(1) of the TMA M4;
 - (ii) a certification mark as defined in section 50(1) of the TMA M5.

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 section 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 M6 (definition of 'the court');
 - (f) section 76 M7 (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 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 'this Act' to the end there were substituted 'made under Article 14a of Regulation (EU) No 1151/2012 of the European Parliament and of the Council';
 - (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 the appointed person from a decision of the registrar in relation to an application referred to in paragraph (a)."

Marginal Citations

- M1 OJ No. L 343, 14.12.2012, p. 1, to which there are amendments not relevant to these Regulations.
- M2 Schedule 2A is prospectively inserted on exit day by S.I. 2019/269.
- M3 Schedule 2B is prospectively inserted on exit day by S.I. 2019/638.
- M4 Section 49(1) was substituted by S.I. 2018/825.
- **M5** Section 50(1) was amended by S.I. 2018/825.
- M6 Section 75 was amended by the Crime and Courts Act 2013 (c. 22), Schedule 9, paragraph 134, S.I. 2005/587.
- M7 Section 76(6) was inserted by S.I. 2005/587.

New Annex 1A

"ANNEX 1A

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

PART 1

Types of designations of origin and geographical indications (the Types Table)

Column 1 Row No.	Column 2 Description of the designation of origin or geographical indication	Column 3 Type A provisions	Column 4 Type B provisions	Column 5 The specified date
1.	A designation of origin or geographical indication that: (a) relates to a geographical area in the British Islands, and (b) is on the United Kingdom's PDOs and PGIs Register, having been entered on that register pursuant to Article 16(1), when the paragraph 1 trade mark application is accepted.	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-exit legislation.
2.	origin or geographical indication that: (a) relates to a geographical area in the United Kingdom, and (b) for which an application to register the designation of origin or geographical	Register when the paragraph 1 trade mark application is accepted and is entered on that register following the	origin or geographical indication to which Article 52a(3), as read with paragraph (4) of that Article, applies but for which an Article 52(4) notice relating to the application to register the designation of origin	designation of origin or geographical indication referred to in point (b) of column 2 was submitted to the European

relevant

designation

origin

submitted to European Commission under United 49(4) EU 1151/2012 exit day.

the with paragraph (4) of indication that Article (pending published Regulation 2. A designation of accepted. before origin or geographical indication:

- (a) that is not on the United Kingdom's and **PGIs** PDOs Register when the paragraph 1 trade mark application is accepted,
- (b) to which Article 52a(3), as read with paragraph (4) of that Article, applies, and (c) for which an Article 52(4) notice relating to application to register the designation of origin or geographical indication is published before the relevant trade mark application is accepted.

is not under Article of EU before 49(4) Kingdom the relevant trade Regulation of applications), applies. mark application is 1151/2012.

- 3. A designation origin geographical indication that: (a) relates to a PDOs a third country, the European Union accepted immediately before entered to an EUIA to Article 11(2). and third country were indication that and Kingdom pursuant mark to an international is
- of 1. A designation of A designation or origin or geographical origin indication that is on geographical and PGIs not geographical area in Register when the United (b) was protected in mark application is Register when the relation to the and on exit day pursuant register pursuant to accepted but must column 2. which the European 2. A designation of the United Kingdom the origin or geographical pursuant contracting parties, not on the United agreement to which (c) must be protected PGIs Register when and the third country United the paragraph 1 trade are agreement to which must be protected the relevant trade United the United Kingdom in the

of The or EUIA-based date that applies to the United Kingdom's indication that is the on the of Kingdom's geographical paragraph 1 trade PDOs and PGIs indication is relevant trade mark EUIA referred to that application is in point (b) of be protected is international Kingdom's PDOs and the United Kingdom contracting application parties that enters accepted but into force on or after

4.

and the third country Kingdom relevant period.

contracting to an international accepted. parties that enters agreement to which into force during the the United Kingdom and the third country are contracting parties that enters into before force the paragraph 1 trade mark application is accepted.

pursuant mark application is

origin geographical indication that: (a) relates to the European Union accepted and immediately before entered to an EUIA to approval Union and contracting parties.

A designation of 1. A designation of A designation or origin or geographical origin indication that is on geographical the United Kingdom's indication: a PDOs and geographical area in Register when the United Kingdom's geographical a third country, and paragraph 1 trade PDOs and PGIs indication (b) was protected in mark application is Register when the relation to the on exit day pursuant register following the accepted, and of which the European application to register an application to the the designation of register third country were origin or geographical designation of origin indication submitted or to the Secretary of indication State under Article 49 submitted period. origin or geographical period indication: PDOs and Register when the application paragraph 1 trade accepted, or accepted, (b) for which an trade application to register application the designation of accepted but origin or geographical which an Article indication is 52(4) notice relating submitted to the to the application Secretary of State to under Article 49 designation of origin during the relevant or period, and

PGIs (a) that is not on the of is relevant trade mark EUIA referred to that application which an (b) for geographical the during the relevant Secretary of State under Article 49 2. A designation of during the relevant and application: (a) that is not on (i) is not submitted the United Kingdom's before the relevant PGIs trade mark mark application is (ii) is submitted before the relevant mark

register

published before

indication is

geographical

not

of The relevant or EUIA-based date that applies to the designation origin is in point (b) of column 2

(c) for which an the relevant trade Article 52(4) approval mark application is notice relating to accepted. application published before the paragraph 1 trade mark application is accepted.

5. A designation origin geographical

indication:

- (a) that relates to a geographical area in a third country,
- (b) for which an assessment relating the protection of the designation of origin geographical

indication was being carried out, request for protection, or an application for assessment for protection, was submitted. before exit in day respect of the designation of origin geographical indication under an EUIA, and

- (c) for which no decision was been made pursuant to the EUIA before exit day as to whether the designation of origin indication should be protected in European Union.
- or of this column. origin geographical indication that: (a) relates to a geographical area in a third country, and

6.

A designation

of See the entry in row 4 See the entry in row The or of this column. 4 of this column.

relevant EUIA-based date that applies to the designation of origin geographical indication in relation to the EUIA referred to in point (b) of column 2.

geographical

of See the entry in row 4 See the entry in row The date on which the application that resulted in the first registration of the designation of

4 of this column.

(b) was on the European Commission's PDOs and PGIs Register immediately before exit day M8.

origin or geographical indication was submitted to the European Commission under the relevant pre-exit legislation.

7. A designation of See the entry in row 4 See the entry in row The origin or of this column. 4 of this column. which geographical applindication:

date on which the application to register the designation of origin or geographical indication referred to in point (b) of column 2 was submitted the European Commission under Article 49(4) or (5) of EU Regulation 1151/2012.

(a) that relates to a geographical area in a third country, and for which application to an register the designation of origin geographical indication was submitted to the European Commission under Article 49(4) or (5) of EU Regulation 1151/2012 before exit day that was neither refused nor resulted in the registration of the designation of origin geographical indication on the European Commission's PDOs and PGIs Register before exit day.

1. In the table in this Part:

- (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 pre-exit Regulation' means:

- (i) in the case of an application to register a designation of origin or geographical 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 ^{M9}, Article 5 or 12a of that Regulation, as relevant;
- (ii) in the case of an application to register a designation of origin or geographical 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 M10, Article 5 of that Regulation;
- (iii) in the case of an application to register a designation of origin or geographical submitted to the European Commission under EU Regulation 1151/2012, Article 49(2) or (5) of that Regulation, as relevant;
- (e) 'the relevant trade mark application' means a trade mark application of the type referred to in Article 14a(2) or (3)(a), as relevant;
- (f) 'the relevant EUIA-based date' means the relevant EUIA-based date determined in accordance with Part 2.

The relevant EUIA-based date

- **2.** In the table in Part 1, 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 or 6, 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 3 or 4 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 exit 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 exit day pursuant to a provision in the EUIA that was provisionally applied before exit 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 exit day pursuant to an amendment made to the EUIA that was provisionally applied before exit 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 of a designation of origin or geographical indication that was protected in the European Union immediately before exit 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 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 exit 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 5 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 exit day under the EUIA, the relevant EUIA-based date is the date the request, or application, for protection or assessment was submitted under 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 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 exit 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 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 or require an assessment to be carried out under the EUIA in relation to the designation of origin or geographical indication."

Marginal Citations

- M8 The European Commission's register relating to designations of origin and geographical indications for agricultural products and foodstuffs (DOOR) is available electronically from https://ec.europa.eu/agriculture/quality/door/list.html. A hard copy of the register as it stood immediately before exit 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.
- **M9** 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).
- **M10** OJ No. L 93, 31.3.2006, p. 12, repealed by Regulation (EU) No 1151/2012 of the European Parliament and of the Council (OJ No. L 343, 14.12.2012, p. 1).

SCHEDULE 2

Regulation 4

Regulation (EU) No 1308/2013 of the European Parliament and of the Council: new provisions

PART 1

New Article 93a

"Article 93a

Definitions: types of designation of origin and geographical indication

In Article 102a and Annex 8A 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' means the designation of origin specified in column 2 of row 2 of the Types Table to which the provisions in column 3 of that row apply;
- (c) 'a type 2B designation of origin' means the designation of origin specified in column 2 of row 2 of the Types Table to which the provision in column 4 of that row applies;
- (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 in 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;
- (l) 'a type 7A designation of origin or geographical indication' means a designation of origin or geographical indication of the type described in column 2 of row 7 of the Types Table to which paragraph 1 or 2 in column 3 of row 4 of that table applies;
- (m) 'a type 7B designation of origin or geographical indication' means a designation of origin or geographical indication of the type described in column 2 of row 7 of the Types Table to which the provisions in column 4 of row 4 of that table apply."

New Articles 102a and 102b

"Article 102a

Transitional provisions: relationship with trade marks

- 1. Unless paragraph 4 applies, an application to register a trade mark that was pending immediately before exit 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 103(2) 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 exit 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 103(2) 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, and
 - (bb) the entry into force of the international agreement 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 99 approval notice relating to the designation of origin or geographical indication, and

- (bb) the Article 99 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 102b(1) and modified by Article 102b(2)) in relation to the registration of a trade mark, the registration of a 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 exit day or filed during the relevant period,
 - (b) the use of the trade mark contravenes, or will, if used, contravene, Article 103(2) in relation to a category B designation of origin or geographical indication, and
 - (c) in the case of a type 2B, 4B, 5B, 6B or 7B designation of origin or geographical indication, the Secretary of State publishes an Article 99 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 a 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 paragraph 1 or 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 93a, 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.** A trade mark that could be used under Article 102(2) of EU Regulation 1308/2013 immediately before exit day and could be renewed pursuant to that provision may continue to be used and renewed:
 - (a) notwithstanding that the use of the trade mark would contravene Article 103(2) 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.

- **9.** Where paragraph 8 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 the United Kingdom's PDOs and PGIs Register following a decision by the Secretary of State to approve an application made under Article 95(1a) MII or Article 3 of 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 MI2.
 - (b) a designation of origin or geographical indication entered on the United Kingdom's PDOs and PGIs Register by the Secretary of State following a decision of the Secretary of State to approve an application to which Article 97A applies;
 - (c) a designation of origin or geographical indication entered on the United Kingdom's PDOs and PGIs Register by the Secretary of State pursuant to the second sentence of Article 104;
 - (d) an established protected designation of origin or an established protected geographical indication entered on the United Kingdom's PDOs and PGIs Register by the Secretary of State pursuant to 107(1).

10. In this Article:

- (a) 'an application to register a trade mark' means an application to register a trade mark filed under the TMA;
- (b) 'a category A designation of origin or geographical indication' means a type 1, 2A, 3A, 4A, 5A, 6A or 7A designation of origin or geographical indication;
- (c) 'a category B designation of origin or geographical indication' means a type 2B, 3B, 4B, 5B, 6B or 7B designation of origin or geographical indication;
- (d) 'the 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 specified, or provided for, 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) 'established protected designation of origin' means a designation of origin covered by Article 107(2)(a);
- (g) 'established protected geographical indication' means a geographical indication covered by Article 107(2)(a);
- (h) '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;
- (i) 'existing EUTM application' has the same meaning as in paragraph 24 of Schedule 2A to the TMA;
- (j) 'existing ITM application' has the same meaning as in paragraph 27(1)(a) of Schedule 2B to the TMA;
- (k) 'existing request for EU extension' has the same meaning as in paragraph 27(1)(b) of Schedule 2B to the TMA;
- (1) '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;
- (m) 'the registrar' has the meaning given by section 62 to the TMA.
- 11. 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 exit day' is to an application that was neither refused, nor resulted in the registration of the trade mark that is the subject of the application, before exit 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 102b

Application and modification of trade mark provisions

- 1. For the purpose of Article 102a, the following provisions of the TMA apply, with the modifications, in the case of section 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 102a(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 102b(1) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products';
 - (ii) in subsection (5), for 'grounds of invalidity exist' there were substituted 'ground for invalidity specified in Article 102a(3) of Regulation (EU) No 1308/2013 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 'this Act' to the end there were substituted 'made under Article 102a(3) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council';
 - (ii) the second paragraph were omitted;
- (d) section 77(1) applies as if, at the end there were inserted 'as applied by Article 102b(1) of Regulation (EU) No 1308/2013 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 102a(3);
 - (b) an appeal to the appointed person from a decision of the registrar in relation to an application referred to in paragraph (a)."

Marginal Citations

M11 Article 95(1a) is prospectively inserted in Regulation (EU) No 1308/2013 of European Council and of the Parliament on exit day by regulation 4(4) of these Regulations.

M12 It is prospectively amended on exit day by S.I. 2019/759, .

New Annex 8A

"ANNEX 8A

TYPES OF DESIGNATION OF ORIGIN AND GEOGRAPHICAL INDICATION TO WHICH ARTICLE 102A APPLIES

PART 1

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

Colun Row No.	nnColumn 2 The name of the designation of origin or a description of the type of designation of origin or geographical indication	Column 3 Type A provisions	Column 4 Type B provisions	Column 5 The specified date
1.	A designation of origin or geographical indication that: (a) relates to a geographical area in the United Kingdom, and (b) is on the United Kingdom's PDOs and PGIs Register, having been entered on that register pursuant to Article 107, when the paragraph 1 trade mark application is accepted.	Not applicable	Not applicable	1. In the case of Darnibole, 30th October 2012. 2. In any other case, 29th December 2011.
2.	Sussex	origin is on the United Kingdom's PDOs and PGIs Register, having been entered on that register following the approval of the application to which Article 97A	Kingdom's PDOs and PGIs Register and an Article 99 notice is not published in relation to the application to register the designation of origin	27th July 2017

mark application is the relevant trade mark application is accepted. accepted.

- A designation of 1. A designation A designation of The relevant EUIA-3. origin or geographical of indication that: (a) relates to geographical area in a on third country, (b) was protected in and PGIs Register PDOs and PGIs indication the European Union when the paragraph Register when the relation to the EUIA immediately before 1 exit day pursuant to application an EUIA to which the accepted and European Union and entered the third country were register pursuant to the United Kingdom contracting parties, the second sentence pursuant and (c) must be protected 2. United of the Kingdom to an international indication that is are agreement to which not the United Kingdom United and the third country PDOs and PGIs the relevant trade are contracting parties Register when the mark application is that enters into force paragraph 1 trade accepted. during the relevant mark period.
- origin geographical a indication that is indication that is designation the United not Kingdom's trade on that be of Article 104. origin pursuant geographical on application accepted is but must be protected United in the Kingdom pursuant to an international agreement to which the United Kingdom and the third country are contracting parties that enters into force before the
- or origin geographical on PDOs United mark relevant trade mark referred to in point is application is accepted but must protected international A designation agreement to which or the United Kingdom and the third country contracting the parties that enters Kingdom's into force on or after
 - or based date applies to the of the origin or Kingdom's geographical is (b) of column 2.

- 4. designation of 1. origin or geographical of indication that: relates to geographical area in a on third country, and (b) was protected in and PGIs Register PDOs and PGIs indication the European Union when the paragraph Register when the relation to the EUIA immediately before 1 exit day pursuant to application
- accepted. origin geographical a indication that is indication: the Kingdom's trade is

paragraph 1 trade mark application is

- A designation A designation or origin geographical United (a) that is not on the origin PDOs United Kingdom's geographical mark relevant trade mark referred to in point
 - of The relevant EUIAor based date that the applies designation of or (b) of column 2.

an EUIA to which the accepted European Union and entered the third country were register contracting parties.

and is application that accepted, and following (b) for which approval of an application to application to register an the designation of origin register designation of origin or geographical geographical indication indication submitted submitted to to the Secretary of Secretary of State State under Article under Article 95(1a), or Article of Commission 3 of Commission Implementing Regulation Implementing (EU) 2019/34 during the Regulation 2019/3, during the relevant period and relevant period. that application: A designation (i) is not submitted or before the relevant of origin geographical trade indication: application (a) that is not on the accepted, or United Kingdom's (ii) is submitted PDOs and PGIs before the relevant Register when the trade paragraph 1 trade application mark application is accepted but accepted, which an Article (b) which 99 notice relating an application to to the application the to register register designation of origin designation of origin geographical or geographical or indication is indication is not submitted to the published before Secretary of State the relevant trade under Article 95(1a), mark application is Article 3 accepted. or of Commission Implementing Regulation (EU) 2019/34, during the relevant period, and (c) for which an Article 99 approval notice relating to the application is published before the paragraph 1 trade mark application is

mark

mark

is

for

accepted.

- 5. designation of See the entry in row See the entry in row The relevant EUIAorigin or geographical 4 of this column. 4 of this column.
 - indication:
 - (a) that relates to a geographical area in a third country, and
 - (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, an application for assessment for protection, submitted, before exit day in respect of the designation of origin or geographical indication under an EUIA, and
 - (c) for which no decision was made pursuant to EUIA before exit day as to whether the designation of origin or geographical indication should be protected in the European Union.
- indication that: relates to a (a) geographical area in a third country, and (b) was on the European Commission's PDOs

6.

- designation of See the entry in row See the entry in row 1. origin or geographical 4 of this column. 4 of this column.
- and PGIs Register immediately before exit day.

In the case a designation of origin geographical indication that was protected under Article 118s(1) or (5) of Council Regulation (EC) No 1234/2007 establishing common organisation agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)

based

applies

origin

designation

geographical

indication

date

relation to the EUIA

referred to in point

(b) of column 2.

to

that

the

of

or

M13, whichever is the later of: (a) the date which the on designation of origin or geographical indication application was first protected in the third country, or (b) 1st January 1996. 2 In the case a designation of of origin geographical indication that was not automatically protected under Article 118s of Regulation (EC) No 1234/2007, the date on which the application that resulted in the first registration of the designation of origin geographical indication was submitted to the European Commission under the relevant pre-exit legislation.

7. A designation of See the entry in row See the entry in row origin or geographical 4 of this column. 4 of this column. 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 the to European Commission under Article 3 Regulation 607/2009

The date on which application the to register the designation of origin or geographical indication referred to in point (b) of column 2 was submitted to the European Commission under the relevant pre-exit legislation.

M14, or Article 3 of EU Regulation 2019/34 M15, before exit 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 before exit day.

1. In the table in this Part:

- (a) 'an Article 99 notice' means a notice published by the Secretary of State under Article 99(2) or (3);
- (b) 'the European Commission's PDOs and PGIs Register' means the register established and maintained by the European Commission pursuant to Article 104 of EU Regulation 1308/2013 M16;
- (c) '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 exit day;
- (d) 'the paragraph 1 trade mark application' means the application to register a trade mark referred to in Article 102a(1);
- (e) '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;
- (f) 'the relevant pre-exit legislation' means, as relevant:
 - (i) in the case of an application to register a designation of origin or geographical indication submitted to the European Commission under Regulation (EC) No 1234/2007, Article 118d or Article 118f(7) of that Regulation, as relevant;
 - (ii) in the case of an application to register a designation of origin or geographical indication submitted to the European Commission under Council Regulation (EC) No 479/2008 on the common organisation of the market in wine M17, Article 36(2) or Article 38(5) of that Regulation, as relevant;
 - (iii) in the case of an application to register a designation of origin or geographical indication submitted to the European Commission under Regulation 607/2009, paragraph 2, 3 or 4 of Article 10 of that Regulation, as relevant;
 - (iv) in the case of an application to register a designation of origin or geographical indication submitted to the European Commission under EU Regulation 1308/2013, Article 96(5) of that Regulation;

- (v) in the case of an application to register a designation of origin or geographical indication submitted to the European Commission under EU Regulation 2019/34, Article 3 or 4 of that Regulation, as relevant;
- (g) 'the relevant trade mark application' means a trade mark application of the type referred to in Article 102a(2) or (3)(a), as relevant;
- (h) 'the relevant EUIA-based date' means the relevant EUIA-based date determined in accordance with Part 2.

The relevant EUIA-based date

- **2.** In the table in Part 1, 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 or 6, 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 3 or 4 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 exit 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 exit day pursuant to a provision in the EUIA that was provisionally applied before exit 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 exit day pursuant to an amendment made to the EUIA that was provisionally applied before exit 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 of a designation of origin or geographical indication that was protected in the European Union immediately before exit 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 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 exit 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 5 designation of origin or geographical indication to which paragraph 3 does not apply and for which a request, or application, for protection or assessment (however described) was submitted before exit day under the EUIA, the relevant EUIA-based date is the date the request, or application, for protection or assessment was submitted under 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 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 exit 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 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 or require an assessment to be carried out under the EUIA in relation to the designation of origin or geographical indication."

Marginal Citations

- **M13** OJ No. L 299, 16.11.2007, p. 1, repealed by Regulation (EU) No 1308/2013 of the European Parliament and of the Council (OJ No. L 347, 20.12.2013, p. 671).
- **M14** OJ No. L 193, 24.7.2009, p. 60, repealed by Commission Delegated Regulation (EU) 2019/33 (OJ No. L 9, 11.1.2019, p. 2).
- M15 OJ No. L 9, 11.1.2019, p. 46.
- **M16** The section of the European Commission's register (eAmbrosia) relating to designations of origin and geographical indications for wine is available 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 eAmbrosia register as it stood immediately before exit 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.

M17 OJ No. L 148, 6.6.2008, p. 1, repealed by Council Regulation (EC) No 491/2009 (OJ No. L 154, 17.6.2009, p. 1).

SCHEDULE 3

Regulation 5

Regulation (EU) No 251/2014 of the European Parliament and of the Council: new provisions

PART 1

New Article 8a

"Article 8a

Definitions: types of geographical indication

In Article 19a and Annex 2A any reference to:

- (a) 'a type 1A geographical indication' means a geographical indication of the type described in column 2 of row 1 of the Types Table to which paragraph 1 or 2 of column 3 of that row applies;
- (b) 'a type 1B geographical indication' means a geographical indication of the type described in column 2 of row 1 of the Types Table to which the provisions in column 4 of that row apply;
- (c) 'a type 2A geographical indication' means a 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;
- (d) 'a type 2B geographical indication' means a 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;
- (e) 'a type 3A geographical indication' means a geographical indication listed in column 2 of row 3 of the Types Table to which paragraph 1 or 2 in column 3 of row 2 of that table applies;
- (f) 'a type 3B geographical indication' means a geographical indication listed in column 2 of row 3 of the Types Table to which the provisions in column 4 of row 2 of that table apply."

PART 2

New Articles 19a and 19b

"Article 19a

Transitional provisions: relationship with trade marks

1. Unless paragraph 4 applies, an application to register a trade mark that was pending immediately before exit 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 20(2) in relation to a category A geographical indication.

- **2.** Unless paragraph 4 applies, an application to register a trade mark that was pending immediately before exit 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 20(2) in relation to a category B 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 1B geographical indication:
 - (aa) the international agreement referred to in paragraph (c) of column 2 of row 1 of the Types Table enters into force, and
 - (bb) the entry into force of the international agreement is brought to the attention of the registrar before the trade mark is registered;
 - (ii) in the case of a type 2B or 3B geographical indication:
 - (aa) the Secretary of State publishes an Article 16 approval notice relating to the geographical indication, and
 - (bb) the Article 16 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 19b(1) and modified by Article 19b(2)) in relation to the registration of a trade mark, the registration of a 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 exit day or filed during the relevant period,
 - (b) the use of the trade mark contravenes, or will, if used, contravene, Article 20(2) in relation to the category B geographical indication, and
 - (c) in the case of a type 2B or 3B geographical indication, the Secretary of State publishes an Article 16 approval notice relating to the 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 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 category A or B geographical indication.
- **5.** As regards paragraph 1 or 2, a column 5 date does not apply in relation to a type 1A or 2A geographical indication where the EUIA referred to in paragraph (b) in column 2 of the row of the Types Table relating to the 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 geographical indication
- **6.** As regards paragraph 3, a column 5 date does not apply in relation to a type 1B or 2B geographical indication where the EUIA referred to in paragraph (b) in column 2 of the row of the Types Table relating to the 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 geographical indication.

- **7.** A trade mark that could be used under Article 19(2) of EU Regulation 251/2014 immediately before exit day and could be renewed pursuant to that provision may continue to be used and renewed:
 - (a) notwithstanding that the use of the trade mark would contravene Article 20(2) in relation to a 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.
- **8.** Where paragraph 7 applies to the use or renewal of a trade mark, this does not affect the use of a geographical indication entered on the United Kingdom's GIs Register by the Secretary of State:
 - (a) following a decision by the Secretary of State to grant an application to register the geographical indication submitted under Article 11;
 - (b) under the second paragraph of Article 16.

9. In this Article:

- (a) 'an application to register a trade mark' means an application to register a trade mark filed under the TMA;
- (b) 'a category A geographical indication' means a type 1A, 2A or 3A geographical indication;
- (c) 'a category B geographical indication' means a type 1B, 2B or 3B geographical indication;
- (d) 'the column 5 date', in relation to a geographical indication that is a category A or B geographical indication, means the date specified, or provided for, in column 5 of the Types Table in the row relating to the relevant type of 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 to the TMA.
- **10.** 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 exit day' is to an application that was neither refused, nor resulted in the registration of the trade mark that is the subject of the application, before exit 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 19b

Application and modification of trade mark provisions

- 1. For the purpose of Article 19a, the following provisions of the TMA apply, with the modifications, in the case of section 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 19a(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 19b(1) of Regulation (EU) No 251/2014 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products';
- (ii) in subsection (5), for 'grounds of invalidity exist' there were substituted 'ground for invalidity specified in Article 19a(3) of Regulation (EU) No 251/2014 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 'this Act' to the end there were substituted 'made under Article 19a of Regulation (EU) No 251/2014 of the European Parliament and of the Council';
 - (ii) the second paragraph were omitted;
- (d) section 77(1) applies as if, at the end there were inserted 'as applied by Article 19b(1) of Regulation (EU) No 251/2014 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 19a(3);
 - (b) an appeal to the appointed person from a decision of the registrar in relation to an application referred to in paragraph (a)."

New Annex 2A

"ANNEX 2A

TYPES OF GEOGRAPHICAL INDICATION TO WHICH ARTICLE 19A APPLIES

PART A

TYPES OF GEOGRAPHICAL INDICATION (THE TYPES TABLE)

Column 5 The ColumnColumn The Column 3 Type A Column 4 Type B provisions Row provisions specified date name, or \boldsymbol{a} No. description, of the geographical indication 1. geographical 1. relevant A Α geographical A geographical The is EUIA-based date indication that: indication indication that the that applies to that is the not on United Kingdom's GIs United Kingdom's the geographical a third country, exit day pursuant Article 21. and Kingdom pursuant Kingdom are parties.

(a) relates to a Register when the GIs Register when indication geographical area in paragraph 1 trade mark the relevant trade relation to application is accepted mark (b) was protected in and is entered on that is the European Union register pursuant to the must be protected column 2. immediately before second paragraph of in to an EUIA to 2. A geographical to an international which the European indication that is not on agreement to which the the United Kingdom's the United Kingdom third country were GIs Register when and the third country contracting parties, the paragraph 1 trade are contracting parties mark application is that enters (c) must be protected accepted but must be force on or after United protected in the United the relevant trade pursuant mark application is to an international to an international accepted. agreement to which agreement to which the United Kingdom the United Kingdom and the third country and the third country contracting are contracting parties that enters into force before the paragraph 1 trade mark application is accepted.

accepted the United Kingdom pursuant

application EUIA referred to but in point (b) of

2. indication that: a third country, and the to an EUIA to of which the European to Union and contracting parties.

geographical 1. A geographical A indication that is on indication: paragraph immediately before entered on that register accepted, and register the geographical third country were indication submitted to submitted the Secretary of State Secretary of State under Article 11 during under Article the relevant period. 2. Α geographical period indication: (a) that is not on (i) is not submitted the United Kingdom's before the relevant GIs Register when trade the paragraph 1 trade application mark application is accepted, or accepted, application to register trade geographical application

geographical The (a) relates to a the United Kingdom's (a) that is not on that applies to geographical area in GIs Register when the United Kingdom's the geographical 1 GIs Register when indication (b) was protected in trade mark application the relevant trade relation to the the European Union is accepted and is mark application is EUIA referred to exit day pursuant following the approval (b) for which an column 2. an application application to register the the geographical indication the during the relevant and that application: mark (ii) is submitted (b) for which an before the relevant

mark

EUIA-based date in point (b) of indication is submitted accepted but to the Secretary of which an Article 16 State under Article 11 notice relating to the during the relevant application to register period, and the geographical (c) for which an indication is not Article 16 approval published before notice relating to the relevant trade the application is mark application is published before the accepted. paragraph 1 trade mark application is accepted.

- 3. The following geographical indications:
 - (a) Nürnberger Glühwein;
 - (b) Samoborski bermet;
 - (c) Thüringer Glühwein;
 - (d) Vermouth de Chambéry;
 - (e) Vermouth de Torino.

following See the entry in row 2 See the entry in row 2 1. In the case al of this column. of the following

- of the following geographical indications, 17th December 1991:

 (a) Nürnberger
- (a) Nürnberger Glühwein;
- (b) Vermouth de Chambéry;
- (c) Vermouth di Torino.
- In the case of Thüringer Glühwein, 2nd November 1996.
 In the case
- of Samoborski bermet, 1st July 2013.

1. In the table in this Part:

- (a) 'an Article 16 notice' means a notice published by the Secretary of State under the second paragraph of Article 16;
- (b) 'the European Commission's GIs Register' means the register maintained by the European Commission under Article 21 of EU Regulation 251/2014 M18;
- (c) 'the paragraph 1 trade mark application' means the application to register a trade mark referred to in Article 19a(1);
- (d) 'the relevant trade mark application' means the trade mark application referred to in Article 19a(2) or (3)(a), as relevant;
- (e) 'the relevant EUIA-based date' means the relevant EUIA-based date determined in accordance with Part B.

PART B

THE RELEVANT EUIA-BASED DATE

- **2.** In the table in Part A, 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, as relevant to the 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 geographical indication contained priority provisions that applied to the geographical indication, the relevant EUIA-based date is the priority date provided for in the EUIA that applied to that geographical indication.
- **4.** In a case of a type 1 or 2 geographical indication to which paragraph 3 does not apply, the relevant EUIA-based date is:
 - (a) in a case where the geographical indication was protected in the European Union immediately before exit 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 geographical indication was protected in the European Union immediately before exit day pursuant to a provision in the EUIA that was provisionally applied before exit 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 geographical indication was protected in the European Union immediately before exit day pursuant to an amendment made to the EUIA that was provisionally applied before exit 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 of a geographical indication that was protected in the European Union immediately before exit 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 the request, or application, for protection or assessment was submitted under the EUIA;
 - (e) in any other case, including a case where the geographical indication was protected in the European Union immediately before exit 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.** 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 geographical indications and 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 geographical indication protected in the European Union immediately before exit day pursuant to an EUIA, means that the provisions in the EUIA providing for the geographical indication to be protected in the European Union did not require a request or application (however described) to be submitted by the contracting third country under the EUIA in relation to the protection of the geographical indication or require an assessment to be carried out under the EUIA in relation to the geographical indication."

Marginal Citations

M18 The European Commission's register of geographical indications of aromatised drinks based on wine products is available electronically from

 $https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/food_safety_and_quality/documents/register-gi-aromatised-wine-products\ en.pdf$

. A hard copy of the register as it stood immediately before exit 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.

SCHEDULE 4

Regulation 6

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

PART 1

New Article 1b

"Article 1b

Definitions: types of traditional term

In Article 32a and Annex 7A any reference to:

- (a) 'a type 1 traditional term' means a traditional term of the 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;
- (j) 'a type 6A traditional term' means a traditional term of the type described in column 2 of row 6 of the Types Table to which paragraph 1 or 2 in column 3 of row 3 of that table applies;
- (k) 'a type 6B traditional term' means a traditional term of the type described in column 2 of row 6 of the Types Table to which the provisions in column 4 of row 3 of that table apply."

PART 2

New Articles 32a and 32b

"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 exit 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 exit 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, and
 - (bb) the entry into force of the international agreement 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 a 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 exit 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 the category B traditional term, and
 - (c) in the case of a type 3B, 4B, 5B or 6B 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 paragraph 1 or 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.** A trade mark that could be used under Article 32(3) of EU Regulation 2019/33 M19, or renewed pursuant to that provision, in the United Kingdom immediately before exit day may continue to be used and renewed on and after exit 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.

- **9.** Where paragraph 8 applies to the use or renewal of a trade mark, this does not affect the use of:
 - (a) an established traditional term (within the meaning of Article 39(2)) entered on the United Kingdom's Traditional Terms Register pursuant to Article 39(1);
 - (b) a traditional term entered on the United Kingdom'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 the United Kingdom's Traditional Terms Register by the Secretary of State under Article 25(3) of Implementing Regulation (EU) 2019/34.

10. In this Article:

- (a) 'an application to register a trade mark' means an application to register a trade mark filed under the TMA;
- (b) 'a category A traditional term' means a type 1, 2A, 3A, 4A, 5A or 6A traditional term;
- (c) 'a category B traditional term' means a type 2B, 3B, 4B, 5B or 6B traditional term;
- (d) 'the 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) '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 exit day;
- (g) '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;
- (h) 'existing EUTM application' has the same meaning as in paragraph 24 of Schedule 2A to the TMA;

- (i) 'existing ITM application' has the same meaning as in paragraph 27(1)(a) of Schedule 2B to the TMA;
- (j) 'existing request for EU extension' has the same meaning as in paragraph 27(1)(b) of Schedule 2B to the TMA;
- (k) '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;
- (l) 'the registrar' has the meaning given by section 62 to the TMA.
- 11. 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 exit day' is to an application that was neither refused, nor resulted in the registration of the trade mark that is the subject of the application, before exit 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 section 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 'this Act' 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 the appointed person from a decision of the registrar in relation to an application referred to in paragraph (a)."

Marginal Citations

M19 OJ No. L 9, 11.1.2019, p. 2.

PART 3

New Annex 7A

"ANNEX 7A

Types of traditional term to which Article 32a applies

PART A

Types of traditional term (the Types Table)

1. Quality sparkling wine Quality wine Regional sparkling wine Regional wine 2. A traditional term that is on the that is not on the based date that applies (a) is used in United Kingdom's relation to a Traditional Terms wine sector product Register when the produced in a third country, mark application is (b) was protected in entered on that immediately before register pursuant to an EUIA to an EUIA to an EUIA to an EUIA to an international agreement to which United Kingdom pursuant to an international Kingdom pursuant agreement to which Kingdom and the United Kingdom pursuant agreement to which Kingdom and the United Kingdom pursuant agreement to which Kingdom and the United Kingdom and the United Kingdom and the United Kingdom pursuant agreement to which the United Kingdom pursuant agreement to which to an international the United Kingdom and the the United Kingdom pursuant agreement to which to an international the United Kingdom and the the United Kingdom pursuant to an international agreement to which to an international the United Kingdom and the the United Kingdom third country are contracting parties are contracting that enters into force before the Not applicable Not applicable Not applicable 30th December 2011 A traditional term that is not on the tarditional term The relevant EUIA- Traditional Terms in relation to the Register when the EUIA- Traditional Terms in relation to the Pointed Kingdom saccepted but must be protected in the United Kingdom and the United Kingdom and the United Kingdom third country are contracting parties are contracting that enters into force before the	Colun Row No.	nColumn 2 The name, or a description, of the	Column 3 Type A provisions	Column 4 Type B provisions	Column 5 The specified date
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	2.	that: (a) is used in relation to a wine sector product produced in a third country, (b) was protected in the European Union immediately before exit day pursuant to an EUIA to which the European Union and the third country were contracting parties, and (c) must be protected in the United Kingdom pursuant to an international agreement to which the United Kingdom and the third country are contracting parties	that is on the United Kingdom's Traditional Terms Register when the paragraph 1 trade mark application is accepted and is entered on that register pursuant to Article 39. 2. A traditional term that is not on the United Kingdom's Traditional Terms Register when the paragraph 1 trade mark application is accepted but must be protected in the United Kingdom pursuant to an international agreement to which the United Kingdom and the third country are contracting parties that enters	that is not on the United Kingdom's Traditional Terms Register when the relevant trade mark application is accepted but must be protected in the United Kingdom pursuant to an international agreement to which the United Kingdom and the third country are contracting parties that enters into force on or after the relevant trade mark application is	based date that applies to the traditional term in relation to the EUIA referred to in

during the relevant paragraph 1 trade period. mark application is accepted.

3. (a) is used relation to country, and (b) was protected in accepted the European Union entered immediately before register exit day pursuant the which the European register Union and the traditional

a Traditional mark application is application and on that (b) approval contracting parties. Secretary of State of under Article 21 Regulation of Regulation 2019/34 during the that application: relevant period. (a) that is not on the trade United Traditional mark application is trade accepted, (b) for register traditional term is relating submitted to the application Secretary of State register Regulation relevant period, and accepted. (c) for which Article 115(2) an approval notice relating to the

A traditional term 1. A traditional term A traditional term: Terms Traditional is accepted, and for which following an application to of register the to an EUIA to an application to traditional term is the submitted to the term Secretary of State third country were submitted to the under Article 21 Implementing (EU) Implementing 2019/34 during the (EU) relevant period and (i) is not submitted 2. A traditional term: before the relevant mark Kingdom's application is Terms accepted, or Register when the (ii) is submitted paragraph 1 trade before the relevant mark application which accepted but for an application to which an Article the 115(2) notice to the to the under Article 21 traditional term is Implementing not published before (EU) the relevant trade 2019/34 during the mark application is

The relevant EUIAthat is on the (a) that is not on the based date that applies in United Kingdom's United Kingdom's to the traditional term Terms in relation to the wine sector product Register when the Register when the EUIA referred to in produced in a third paragraph 1 trade relevant trade mark point (b) of column 2.

is

application

accepted.

published before the paragraph 1 trade mark application is

A traditional term: 4. (a) that is used 3 of this column. in relation to a wine sector 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 exit day in respect of the traditional under term an EUIA, and (c) for which no decision was made pursuant to the EUIA before exit day as to whether the traditional term should be protected in the European Union.

See the entry in row See the entry in row The relevant EUIA-3 of this column. 3 of this column. based date that applies

The relevant EUIA-based date that applies to the traditional term in relation to the EUIA referred to in point (b) of column 2.

5. that: (a) is used in relation to wine sector product produced in a third country, and (b) was on the European Commission's Traditional Terms Register immediately before

exit day.

A traditional term See the entry in row See the entry in row 1. In relation to that:

3 of this column.

3 of this column.

a traditional term

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 description, the designation, presentation protection of certain wine sector products when that Regulation was published the in Official Journal of the European Union, 4th May 2002.

Changes to legislation: There are currently no known outstanding effects for the The Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2019 (expired—not approved). (See end of Document for details)

- 2. In relation to a traditional term added to Annex 3 to Regulation (EC) No 753/2002 after 4th May 2002, the date on and from which the addition of the traditional term to that Annex applied.
- 3. In any other case, the date on which the application that resulted the first registration of the traditional term was submitted the European Commission under the relevant pre-exit EU legislation.
- 6. A traditional term: See the entry in row See the entry in row The date on which the
 (a) that is used 3 of this column. 3 of this column. application referred to

The date on which the application referred to in point (b) of column 2 was submitted to the European Commission under the relevant pre-exit EU legislation.

- in relation to a wine sector product produced in a third country, and which (b) for application an register the to traditional term was submitted to the European Commission under 29 Article Regulation 607/2009, or Article 21 of EU Regulation 2019/34, before exit day that was neither refused nor resulted in traditional term being added to the European Commission's Traditional Terms Register before exit day.
 - 1. In the table in this Part:

- (a) 'an Article 115(2) notice' means a notice published by the Secretary of State under the second subparagraph of Article 115(2) of Regulation (EU) No 1308/2013;
- (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) '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 exit day;
- (d) 'the paragraph 1 trade mark application' means the application to register a trade mark referred to in Article 32a(1);
- (e) '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;
- (f) 'the relevant pre-exit 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 trade mark application referred to in Article 32a(2) or (3)(a), as relevant;
- (h) 'wine sector 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;
- (i) 'the relevant EUIA-based date' means the relevant EUIA-based date determined in accordance with Part B.

PART B

The relevant EUIA-based date

- **2.** In the table in Part A, 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 or 6, 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 2 or 3 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 exit 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 exit day pursuant to a provision in the EUIA that was provisionally applied before exit 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 traditional term was protected in the European Union immediately before exit day pursuant to an amendment made to the EUIA that was provisionally applied before exit 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 of a traditional term that was protected in the European Union immediately before exit 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 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 exit 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 4 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 exit day in accordance with provisions in the EUIA, the relevant EUIA-based date is the date 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 exit 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 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 or require an assessment to be carried out under the EUIA in relation to the traditional term."

Marginal Citations

M20 The European Commission's register of traditional terms protected in the European Union (part of the E-Bacchus database) is available electronically from

https://ec.europa.eu/agriculture/markets/wine/e-bacchus/index.cfm?

event=resultsPTradTerms&language=EN

. A hard copy of the register of traditional terms as it stood immediately before exit 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.

M21 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).

SCHEDULE 5

Regulation 7

Regulation (EU) 2019/787 of the European Parliament and of the Council: new provisions

PART 1

New Article 4

"Article 4

Definitions: types of geographical indication

In Article 36a and Annex 1A any reference to:

- (a) 'a type 1 geographical indication' means a geographical indication listed in column 2 of row 1 of the Types Table;
- (b) 'a type 2A geographical indication' means a geographical indication 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 geographical indication' means a 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 geographical indication' means a geographical indication 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 geographical indication' means a 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 geographical indication' means a geographical indication 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 geographical indication' means a geographical indication 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 geographical indication' means a geographical indication 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 geographical indication' means a 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 3 of that table apply;
- (j) 'a type 6A geographical indication' means a geographical indication of the type described in column 2 of row 6 of the Types Table to which paragraph 1 or 2 in column 3 of row 3 of that table applies;
- (k) 'a type 6B geographical indication' means a 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 3 of that table apply."

PART 2

New Articles 36a and 36b

"Article 36a

Transitional provision: relationship between trade marks and geographical indications

- 1. Unless paragraph 4 applies, an application to register a trade mark that was pending immediately before exit 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 21(2) in relation to a category A geographical indication.
- **2.** Unless paragraph 4 applies, an application to register a trade mark that was pending immediately before exit 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 21(2) in relation to a category B 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 2B geographical indication:
 - (aa) the international agreement referred to in paragraph (c) of column 2 of row 2 of the Types Table enters into force, and
 - (bb) the entry into force of the international agreement is brought to the attention of the registrar before the trade mark is registered;
 - (ii) in the case of any other category B geographical indication:
 - (aa) the Secretary of State publishes an Article 30(4) approval notice relating to the geographical indication, and
 - (bb) the Article 30(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 36b(1) and modified by Article 36b(2)) in relation to the registration of a trade mark, the registration of a 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 exit day or filed during the relevant period,
 - (b) the use of the trade mark contravenes, or will, if used, contravene, Article 21(2) in relation to the category B geographical indication, and
 - (c) in the case of a type 3B, 4B, 5B or 6B geographical indication, the Secretary of State publishes an Article 30(4) approval notice relating to the 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 the category A or B 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 geographical indication.
- **5.** As regards paragraph 1 or 2, a column 5 date does not apply in relation to a type 2A, 3A or 4A geographical indication where the EUIA referred to in paragraph (b) in column 2 of the row of the Types Table relating to the 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 geographical indication
- **6.** As regards paragraph 3, a column 5 date does not apply in relation to a type 2B, 3B or 4B geographical indication where the EUIA referred to in paragraph (b) in column 2 of the row of the Types Table relating to the 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 geographical indication.
- 7. Where a geographical indication falls within the definition of more than one type of geographical indication in Article 4, 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 geographical indication.
- **8.** A trade mark that could be used in the United Kingdom under Article 36(2) of EU Regulation 2019/787 M22, and could be renewed pursuant to that provision, immediately before exit day may continue to be used and renewed on and after exit day:
 - (a) notwithstanding that the use of the trade mark would contravene Article 21(2) in relation to a 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.
- **9.** Where paragraph 8 applies to the use or renewal of a trade mark, this does not affect the use of:
 - (a) a geographical indication entered on the United Kingdom's GIs Register by the Secretary of State following a decision by the Secretary of State to approve an application made under Article 24;

- (b) a geographical indication entered on the United Kingdom's GIs Register by the Secretary of State under Article 33(3);
- (c) a United Kingdom established geographical indication entered on the United Kingdom's GIs Register pursuant to Article 37(1).

10. In this Article:

- (a) 'an application to register a trade mark' means an application to register a trade mark filed under the TMA;
- (b) 'a category A geographical indication' means a type 1, 2A, 3A, 4A, 5A or 6A geographical indication;
- (c) 'a category B geographical indication' means a type 2B, 3B, 4B, 5B or 6B geographical indication;
- (d) 'the column 5 date', in relation to a geographical indication that is a category A or B geographical indication, means the date specified, or provided for, in column 5 of the Types Table in the row relating to the relevant type of 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 to the TMA.
- **11.** 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 exit day' is to an application that was neither refused, nor resulted in the registration of the trade mark that is the subject of the application, before exit 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 36b

Application and modification of trade mark provisions

- 1. For the purpose of Article 36a, the following provisions of the TMA apply, with the modifications, in the case of section 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 36a(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 36b(1) of Regulation (EU) 2019/787 of the European Parliament and of the Council on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages,';
 - (ii) in subsection (5), for 'grounds of invalidity' there were substituted 'ground for invalidity specified in Article 36a(3) of Regulation (EU) 2019/787 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 'this Act' to the end there were substituted 'made under Article 36a(3) of Regulation (EU) 2019/787 of the European Parliament and of the Council';
 - (ii) the second paragraph were omitted;
- (d) section 77(1) applies as if, at the end there were inserted 'as applied by Article 36b(1) of Regulation (EU) 2019/787 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 36a(3);
 - (b) an appeal to the appointed person from a decision of the registrar in relation to an application referred to in paragraph (a)."

Marginal Citations

M22 OJ No. L 130, 17.5.2019, p. 1.

PART 3

New Annex 1A

"ANNEX 1A

TYPES OF GEOGRAPHICAL INDICATION TO WHICH ARTICLE 36A APPLIES

PART 1

Types of geographical indication (the Types Table)

Colun Row No.	name, description	or n, graph	a of	Column 3 Type A provisions	Column 4 Type B provisions	Column 5 The specified date
1.	The geographic indications (a) Irish Cr (b) Irish P Poitín; (c) Irish Irish Whish Beatha Eire (d) Scotch	al eam; oteen/ Whisky/ U	Trish skey/ Jisce h;	Not applicable	Not applicable	1. In the case of the following geographical indications, 1st January 1996: (a) Irish Cream; (b) Irish Whiskey/ Irish Whisky/ Uisce Beatha Eireannach; (c) Scotch Whisky.

(e) Somerset Cider Brandy.

2. In the case of Irish Poteen/Irish Poitín, 20th May 2008. In the case of Somerset Cider Brandy, 26th February 2012.

date

to

the

- 2. Α indication that: relates to a on geographical area in a Kingdom's third country, (b) was protected in paragraph 1 trade the relevant trade to the EUIA referred the European Union mark application is mark immediately before accepted and is is exit day pursuant to entered on that must be protected an EUIA to which the register pursuant to in European Union and Article 33(3). the third country were 2. A geographical to an international contracting parties, indication that is agreement to which and (c) must be protected Kingdom's the in Kingdom to an international mark agreement to which is accepted but the relevant trade the United Kingdom must be protected mark application is and the third country in the are contracting parties Kingdom pursuant that enters into force to an international during the relevant agreement to which period.
- geographical 1. A geographical A the United not United Register when the are the United Kingdom and the third country are contracting parties that enters into force before the paragraph 1 trade mark application is accepted.

geographical The relevant EUIAindication that is indication that is based on the applies GIs United Kingdom's geographical Register when the GIs Register when indication in relation application to in point (b) of accepted but column 2. the United Kingdom pursuant not on the United the United Kingdom GIs and the third country contracting pursuant paragraph 1 trade parties that enters application into force on or after United accepted.

3. indication that: relates to a on geographical area in a Kingdom's third country, and (b) was protected in paragraph 1 trade the relevant trade to the EUIA referred the European Union mark application is mark application is to in point (b) of immediately before accepted and is accepted, and exit day pursuant to entered on that (b) an EUIA to which the register following an application to European Union and the

- geographical 1. A geographical A indication that is indication: the approval of register application geographical an
- United (a) that is not on the applies GIs United Kingdom's geographical Register when the GIs Register when indication in relation for which the

geographical The relevant EUIAbased that date the column 2

the third country were to register the indication is submitted to contracting parties. geographical the Secretary of State indication submitted to the under Article 24(8) Secretary of State during the relevant under Article 24(8) period and during the relevant application: (i) is not submitted period. 2. A geographical before the relevant indication: trade mark (a) that is not application is on the United accepted, or GIs (ii) is submitted Kingdom's Register when the before the relevant paragraph 1 trade trade mark mark application is application is accepted but for accepted, (b) which which an Article application 30(4) notice relating an register the to the application to designation of to register origin or geographical geographical indication is not is published indication before submitted to the the relevant trade Secretary of State mark application is under Article 24(8) accepted. during the relevant period, and (c) for which Article 30(4) an notice approval relating the to application is published before the paragraph 1 trade mark application is accepted. geographical See the entry in row See the entry in row The relevant EUIA-3 of this column. 3 of this column.

4. indication: (a) that relates to a geographical area in a third country, and (b) for which an assessment relating the protection of the geographical indication was being carried out, or a request for protection, application or an for assessment for

based date that applies the to geographical indication in relation to the EUIA referred to in point (b) of column 2.

protection, was submitted, before exit day in respect of the geographical indication under an EUIA, and (c) for which no decision was made pursuant to the EUIA before exit day as to whether the geographical indication should be protected in the European Union.

5. A geographical indication that:

(a) relates to a geographical area in a third country, and
(b) was on the European
Commission's GIs Register immediately before exit day.

geographical See the entry in row See the entry in row 1. In a case where n that: 3 of this column. 3 of this column. the geographical

the geographical indication was listed in Annex 2 to Council Regulation (EEC) No 1576/89 laying down general rules on the definition, description presentation of spirit drinks M23 before 1st January 1996, 1st January 1996. 2. In a case where geographical indication was added to Annex 2 to Regulation (EEC) No 1576/89 on or after 1st January 1996, the date on and from which the entry adding geographical that indication to Annex 2 applied. 3. In a case where geographical indication was not listed in Annex 2 to Regulation (EEC) No 1576/89: (a) where it was

listed in Annex 3 to EU Regulation 110/2008 M24 when

that Regulation came into force, 20th May 2008;

(b) where it was not listed in Annex 3 to EU Regulation 110/2008 when that Regulation came into force, the date on and from which the entry adding the geographical indication to Annex 3 to EU Regulation 110/2008 applied.

- 6. A

 - geographical See the entry in row See the entry in row The date on which 3 of this column. 3 of this column.

application referred to in point (b) column in submitted 2 was the European Commission under the relevant pre-exit legislation.

indication: (a) that relates to a geographical area in a third country, and (b) for which an application to register geographical the indication was submitted the to European Commission under Article 17 of EU Regulation 110/2008 or Article 24(4), (7) or (8) of EU Regulation 2019/787 before exit day that was neither refused nor resulted

the

110/2008

European Commission's

day.

of the geographical indication to Annex 3 to EU Regulation

Register before exit

addition

GIs

1. In the table in this Part:

or

- (a) 'an Article 30(4) notice' means a notice published by the Secretary of State under Article 30(4);
- (b) 'the European Commission's GIs Register' means the section of the European Commission's eAmbrosia geographical indications register relating to spirit drinks maintained by the European Commission electronically on the ec.europa.eu website M25;

- (c) 'the paragraph 1 trade mark application' means the application to register a trade mark referred to in Article 36a(1);
- (d) 'the relevant pre-exit legislation' means:
 - (i) in the case of an application to register a geographical indication submitted to the European Commission under EU Regulation 110/2008, Article 17 of that Regulation;
 - (ii) in the case of an application to register a geographical indication submitted to the European Commission under EU Regulation 2019/787, Article 24 of that Regulation;
- (e) 'the relevant trade mark application' means the trade mark application referred to in Article 36a(2) or (3)(a), as relevant;
- (f) 'the relevant EUIA-based date' means the relevant EUIA-based date determined in accordance with Part 2.

PART 2

The relevant EUIA-based date

- **2.** In the table in Part 1, 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 or 6, as relevant to the 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 geographical indication contained priority provisions that applied to the geographical indication, the relevant EUIA-based date is the priority date provided for in the EUIA that applied to that geographical indication.
- **4.** In a case of a type 2 or 3 geographical indication to which paragraph 3 does not apply, the relevant EUIA-based date is:
 - (a) in a case where the geographical indication was protected in the European Union immediately before exit 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 geographical indication was protected in the European Union immediately before exit day pursuant to a provision in the EUIA that was provisionally applied before exit 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 geographical indication was protected in the European Union immediately before exit day pursuant to an amendment made to the EUIA that was provisionally applied before exit 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 of a geographical indication that was protected in the European Union immediately before exit 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 the request, or application, for protection or assessment was submitted under the EUIA;

- (e) in any other case, including a case where the geographical indication was protected in the European Union immediately before exit 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 4 geographical indication to which paragraph 3 does not apply and for which a request, or application, for protection or assessment (however described) was submitted before exit day in accordance with provisions in the EUIA, the relevant EUIA-based date is the date 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 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 geographical indication protected in the European Union immediately before exit day pursuant to an EUIA, means that the provisions in the EUIA providing for the geographical indication to be protected in the European Union did not require a request or application (however described) to be submitted by the contracting third country under the EUIA in relation to the protection of the geographical indication or require an assessment to be carried out under the EUIA in relation to the geographical indication."]

Marginal Citations

- **M23** OJ No. L 160, 12.6.1989, p. 1, repealed by Regulation (EC) No 110/2008 of the European Parliament and of the Council (OJ No. L 39, 13.2.2008, p. 16).
- M24 OJ No. L 39, 13.2.2008, p. 16, last amended by Regulation (EU) 2019/787 of the European Parliament and of the Council (OJ L 130, 17.5.2019, p. 1). Article 49 of Regulation (EU) 2019/787 of the European Parliament and of the Council contains provisions repealing provisions of Regulation (EC) No 110/2008 of the European Parliament and of the Council at different times, including the repeal of some provisions before exit day.
- M25 The spirit drinks section of the eAmbrosia geographical indications register is available electronically via
 - https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/

Changes to legislation: There are currently no known outstanding effects for the The Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2019 (expired—not approved). (See end of Document for details)

. A hard copy of the eAmbrosia register as it stood immediately before exit 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) (EU Exit) Regulations 2019 (expired—not approved).