



Department  
for Environment  
Food & Rural Affairs

# Geographical Indications

## Consultation on establishing UK Geographical Indications (GI) schemes after EU Exit

October 2018



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# 1. Summary of the consultation

- 1.1 This consultation addresses “The Quality Agricultural Products and Foodstuffs, Spirit Drinks, Wine and Aromatised Wine (Amendments etc.) (EU Exit) Regulations 2018”. These regulations amend four<sup>1</sup> related EU regulations, which the EU (Withdrawal) Act 2018 will bring into UK law on 29 March 2019. The amendments made by these regulations will:
  - a) create working UK Geographical Indication (GI) schemes (roughly 85% of the content of the regulations), and
  - b) ensure we continue to regulate the wines and spirit drink sectors effectively (roughly 15%).
- 1.2 This consultation outlines legal changes made to the existing EU GI schemes to establish UK GI schemes and seeks stakeholders views on the necessary procedural amendments proposed to the existing EU GI schemes. It also addresses changes to the wine and spirit drink EU regulations; and seeks stakeholders’ views on these necessary procedural amendments. This is required to ensure a smooth transition to UK schemes on the day we leave the EU.
- 1.3 The new UK GI schemes proposed in this consultation would bring automatic protection for UK products registered under the existing EU GI schemes.
- 1.4 In addition, we are seeking to ensure that UK GIs registered under the EU schemes will continue to enjoy protections in the EU, however this is subject to ongoing negotiations.
- 1.5 The consultation period lasts 4 weeks: **the closing** date for submissions is **1<sup>st</sup> November 2018**.

## 2. Introduction to Geographical Indications

- 2.1 GIs are a form of intellectual property protection that identifies a product as originating in a country, region or locality where a given quality, reputation or other characteristic of the product is attributable to the place where it is produced.

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<sup>1</sup> Quality schemes for agricultural products and foodstuffs (1151/2012); Wine (1308/2013); Aromatised Wine, (251/2015) and Spirit Drinks (110/2008) relating to three award classifications; PDO: Protected Designation of Origin; PGI: Protected Geographical Indication; and. TSG: Traditional Speciality Guaranteed (PGI relates to all four regulations; PDO all except aromatised wine and TSG only the agricultural and food stuff regulation).

- 2.2 The UK Government and the devolved administrations recognise the economic and cultural importance of GIs, which are also important to the strength of our global reputation for quality food. Producers of GI products value the schemes for the collective protection they bring from imitation and evocation and, in some cases, the premium it allows them to charge for products.
- 2.3 A total of 86<sup>2</sup> products from the UK are registered as GIs under the EU schemes: 76 agricultural and food products, five wines and five spirit drinks. The UK's GIs represent over £5 billion in UK export value each year (25% of all UK food and drink exports by value) and play an important role in rural economies. The most significant UK product by value is Scotch Whisky, of which the UK exports over £4bn per year. Others such as Scottish Farmed Salmon, Scotch Beef and Scotch Lamb, Welsh Lamb and Beef, Stilton Cheese and Lough Neagh Eels are collectively worth more than £800m a year in exports.
- 2.4 EU rules govern the four GI schemes that currently apply in the UK. These cover i) agricultural products and foodstuffs ii) wines iii) spirit drinks and iv) aromatised wines. The schemes provide legal protection from imitation for both regional and traditional specialties, whose authenticity and origin can be guaranteed. This gives assurance to consumers that products are genuine and enables producers to better promote and market their products.
- 2.5 As a signatory to the World Trade Organisation (WTO) Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement, the UK is required to protect all GIs that it recognises from unfair competition and imitation. For agricultural products and foodstuffs, wines, spirits and aromatised wines, this is currently carried out under the four existing EU GI schemes.<sup>3</sup>
- 2.6 To continue to meet this obligation for Day 1 of EU Exit, the EU (Withdrawal) Act 2018 will ensure that the provisions covered under the four existing EU GI schemes are retained in UK law.
- 2.7 The section of this document headed 'Operability changes' addresses how the Government will ensure the current EU GI schemes, once retained in UK law, will continue to be applied.
- 2.8 In parallel, we are investigating how the enforcement of the current quality agricultural products and foodstuffs scheme can be improved in the UK. The enforcement regime will apply to all products protected by the EU Regulation 1151/2012 pre EU withdrawal, and post EU withdrawal to relevant products protected under the new UK GI scheme. The new GI schemes proposed in this consultation would bring protection

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<sup>2</sup> As updated on 14/06/2018 See further information on the current scheme and UK products as here <https://www.gov.uk/government/collections/protected-food-name-scheme-uk-registered-products>

<sup>3</sup> As set out in Council Regulations (EC) No. 1151/2012 (foods); 1308/2013 (wine); 110/2008 (spirits); and 251/2015 (aromatised wines) and Commission Regulations 606/2009 and 607/2009 (both wine)

for UK products registered under the existing GI schemes. We plan to consult separately on enforcement arrangements.

### 3. Operability changes

- 3.1 The **EU (Withdrawal) Act 2018** will retain the EU's GI schemes and wine and spirit drink regulations in UK law at the point EU law ceases to apply in the UK, providing consistency and certainty to stakeholders. The Withdrawal Act only allows the government to amend the EU rules to ensure they work properly in the UK. This means that the UK schemes will be very similar to the existing EU regulations and existing UK GIs will continue to be protected in the UK. This will occur automatically, and no action from producers is required.
- 3.2 The regulations which will make these necessary changes are the Quality Agricultural Products and Foodstuffs, Spirit Drinks, Wine and Aromatised Wine (Amendments etc.) (EU Exit) Regulations 2018 (known here as the **EU Exit Regulations**).
- 3.3 The amendments the EU Exit regulations bring in are mostly changes to make sure the rules continue to work in the UK and there is minimal disruption to stakeholders. An example would include replacing '[European] Commission' with 'Secretary of State' in terms of decision making, for example awarding new GIs.
- 3.4 However, there are a few instances where more substantive amendments are necessary to make the schemes work under UK law. Such changes include:
- 3.5 That the GI schemes will be administered as UK schemes, not as European schemes;
  - As UK schemes, all applications will go through a single UK scrutiny and opposition process, rather than the current two-stage process (the current Member State and European Commission stages will be combined into a single modified UK scheme process). Those wishing to apply for EU registration will need to go through a separate EU application process.
  - The introduction of revised appeals provisions, required as a result of the UK assuming new responsibilities and functions, previously belonging to the EU.
  - Creation and use of new UK GI logos, including an adoption period for existing UK agri-food GIs to comply with the requirement to use the new UK logo when trading in the UK market.
- 3.6 This consultation is seeking stakeholder views on the latter two amendments.
- 3.7 As noted above, in exiting the EU and retaining the current EU regulations, the UK will need to take on the responsibilities and functions currently undertaken by the European Commission. This entails streamlining the existing two-stage process in

the EU GI schemes into a one-step UK process, as outlined in the table below. The table is without prejudice to the outcome of ongoing negotiations with the EU.

GI scheme responsibilities		
	Current EU GI Schemes	Post EU Exit UK GI Schemes
National enforcement of the schemes	<ul style="list-style-type: none"> <li>• EU-recognised GIs are enforced in every EU Member State and in third countries through trade agreements.</li> </ul>	<ul style="list-style-type: none"> <li>• UK-recognised GIs will be enforced in the UK and through trade agreements only</li> </ul>
Application Process	<ul style="list-style-type: none"> <li>• <b>Step 1:</b> Member states scrutinise the application; if satisfactory the Member State conducts a national opposition procedure<sup>4</sup>, open only to parties based within that Member State.</li> <li>• <b>Step 2:</b> The European Commission scrutinises Member State/Third Country approved applications. If satisfactory, the European Commission conducts an opposition procedure open to any interested party, excluding the Member State from which the application originates.</li> </ul>	<ul style="list-style-type: none"> <li>• A single UK application process. The UK will scrutinise applications, with input from devolved administrations. For successful applications, the UK GI schemes will provide for one opposition procedure, open to all parties with a legitimate interest.</li> <li>• Should a UK applicant want to apply to the European Commission as a non-EU third country they will apply direct to them once registered in the UK.</li> </ul>
Awarding or declining GI status to applications	<ul style="list-style-type: none"> <li>• The European Commission holds the function to register or reject applications.</li> </ul>	<ul style="list-style-type: none"> <li>• The UK will hold the function to register or reject applications.</li> </ul>
Approving amendments	<ul style="list-style-type: none"> <li>• <b>Step 1:</b> Member States/Third countries review producer requests for application amendments.</li> <li>• <b>Step 2:</b> The European Commission approves requests for temporary, minor and major amendments to applications.</li> </ul>	<ul style="list-style-type: none"> <li>• The UK will approve requests for temporary, minor and major amendments to applications to UK schemes.</li> </ul>
Establishing a publicly accessible updated register of GI products.	<ul style="list-style-type: none"> <li>• The European Commission establishes a publicly accessible updated register of GI products recognised in the EU.</li> </ul>	<ul style="list-style-type: none"> <li>• The UK will establish a publicly accessible updated register of GI products recognised in the UK.</li> </ul>

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<sup>4</sup> Opposition procedure: A form of consultation whereby approved applications are made publicly available for interested parties to oppose if desired. The conditions of a valid opposition are outlined further in the Regulations.

		The register will provide links through to product specifications.
Fee Charging for scheme administration <sup>5</sup>	<ul style="list-style-type: none"> <li>• EU Member States may charge a fee to cover their costs of managing the quality schemes, including those incurred in processing applications, statements of opposition, and applications for amendments and requests for cancellations provided for in the EU Regulation.</li> </ul>	<ul style="list-style-type: none"> <li>• The UK GI schemes will be able to charge a fee to cover their costs of managing the quality schemes, including those incurred in processing applications, statements of opposition, applications for amendments and requests for cancellations provided for in this Regulation. The UK Government has no plans at present to exercise this function, but may need to review this in the future.</li> </ul>

## Spirit drinks and wine regulations

3.8 The EU Exit regulations will retain the EU **spirit drinks** regulations in UK law, and maintain enforcement provisions in the UK. As with the GI scheme amendments, this is to ensure that the rules continue to work in the UK and there is minimal disruption to stakeholders, for example replacing references to the '[European] Commission' and '[European] Union provisions' with the appropriate UK terms. This will form the basis of the GI scheme for spirit drinks in the UK, and preserve the definition, description, presentation and labelling rules for spirit drinks.

3.9 There is a Commission proposal dated 1 December 2016 to replace the current spirit drinks regulation, which is presently progressing through the EU legislative system. Our intention is for these changes to be reflected in UK legislation, assuming that the new regulation is applicable prior to the UK's withdrawal from the EU.

3.10 The EU Exit regulations will also retain the EU **wine** and **aromatised wine** regulations<sup>6</sup> in UK law, and maintain enforcement provisions in the UK. This will form the basis of the GI schemes for wines and aromatised wines in the UK, and preserve the definition, description, presentation, labelling and oenological rules<sup>7</sup> for wines and aromatised wines.

<sup>5</sup> To note that this is separate to product verification charging by accredited control bodies. Such charging takes place under the EU schemes and is set to continue.

<sup>6</sup> Wine Regulations 2011

<sup>7</sup> Relating to the principle chemical, organic and gas products used to make and store wine



- 3.11 Alongside GIs, the EU also protects **traditional terms** which have become closely associated with (and therefore evoke) winemaking and viticulture of a particular style or geographic area. The UK will similarly offer protection to these traditional terms.
- 3.12 In line with proposed changes on spirit drinks regulation, there are EU Commission proposals to replace the current wine and aromatised wine regulations. These are currently progressing through the EU legislative system. Our intention is for these changes to be reflected in UK legislation, assuming the new regulations are applicable prior to the UK's exit from the EU.

## 4. Amendments to the provisions of existing GI schemes

### UK logos and symbols:

- 4.1 Logos indicating Protected Designations of Origin (PDO), Protected Geographical Indications (PGI) and Traditional Speciality Guaranteed (TSG) for agricultural and food, wine, aromatised wine and spirit drink products are a requirement within current EU legislation. We intend to replace the EU logos with new UK logos for use in the UK after we leave the EU. Producers who registered under the EU scheme could also choose to continue wearing the EU logo<sup>8</sup>.
- 4.2 If a producer only wishes to wear one logo, where the UK logo is mandatory, this will take precedent.
- 4.3 The rules on the use of these logos will be the same as in the current EU legislation. This means that for wine, aromatised wine and spirit drink GI products the use of the relevant logo will be optional. For agricultural and food products, the use of the appropriate scheme logo in the UK market will be mandatory. For existing UK GIs, the appropriate EU logo may continue to be used but will only indicate that the product is protected within the EU (not the UK).
- 4.4 We would like stakeholders' views on two aspects of the rules on logos:
- 4.5 First, **we would like to know what you think the logos should represent, and how this can be reflected in the design**. Please bear in mind that the logos should remain unchanged in size from the EU's current logos, the design will need to work for both colour and black and white versions, and be suitable for, and sensitive to, a geographically diverse range of producers across the UK and beyond.

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<sup>8</sup> Except in the event of a 'no deal' where the EU removes UK GIs from the EU GI registers. However this is considered unlikely as the EU would have to introduce new regulations to be able to do so.

- 4.6 Previous feedback from stakeholders and consumers has highlighted quality, provenance and heritage as key associations with the scheme. We are aware of the important role a logo plays with regards the recognition and understanding of both consumers and trade. We want the UK GI logos to be well recognised in the market place and therefore propose that the PDO, PGI and TSG logos are variants of the same design rather three different designs.
- 4.7 Second, as introducing a change in logo will bring costs to producers, in terms of redesign of packaging and reprinting costs, **we would like to collate views on the timescale before the new logo becomes mandatory** (as above, for agricultural and food products only).
- 4.8 The proposal for the EU Exit regulation is to establish a three year ‘adoption period’ to manage the impact of this change in logo on established<sup>9</sup> UK agricultural and food GIs. This is based on analysis that a three year period reasonably allows businesses to incorporate labelling changes within their normal labelling cycles, to the point that the cost burden reduces by around 95% (compared with an immediate change requirement). As such a three year adoption period is assessed to have a negligible net business impact.
- 4.9 Producers who want to start wearing the new logo before the end of the adoption period are fully entitled to do so.

- 1. What should UK logos of the PDO, PGI and TSG schemes represent, and how might this be reflected in their design?**
- 2. Is three years an appropriate adoption period for existing UK GI holders to update their packaging to reflect the new logo? If not, how long should the adoption period last?**

## Appeals:

- 4.10 New appeal arrangements need to be put in place as a result of the UK assuming new responsibilities and functions relating to GI applications currently exercised by the EU Commission<sup>10</sup>. This will include dealing with applications for GIs, including applications for new GIs, applications for amendments and applications for cancellation and related opposition and notification procedures. The EU Exit Regulation (as set out in paragraph 1.1) will include amendments that will enable people with a legitimate interest who are aggrieved by decisions made by the competent authority in relation to GIs to appeal.

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<sup>9</sup> Established: Awarded GI status prior to EU exit.

<sup>10</sup> As outlined in the European Regulation on quality schemes for agricultural products and foodstuffs, the Wine Regulations and the Spirit Drinks Regulations.

- 4.11 We propose that appeals should go to the First-tier Tribunal. The First-tier Tribunal is part of the UK court system. It is independent and completely separate from the UK Government. Tribunal hearings are usually overseen by a tribunal judge and trained lay tribunal members. The First-tier Tribunal is presided over by the Senior President of Tribunals.
- 4.12 Under the EU Exit Regulation It is proposed that there should be the right to appeal the following:
- a decision that an application does not meet the conditions of the scheme, resulting in a decision not to proceed to the opposition procedure, thereby preventing the application from progressing any further;
  - a decision to grant or reject an application following the opposition procedure;
  - a decision to grant or reject applications made to amend a GI specification once awarded; and
  - a decision to cancel a PDO, PGI or TSG.
- 4.13 The First-tier Tribunal is empowered to deal with a wide range of issues which might form the substance of appeals, and to ensure the cases are dealt with in the interest of justice and minimising parties' costs. The composition of a tribunal panel is a matter for the Senior President of Tribunals to decide and may include non-legal members with suitable expertise or experience in an appeal in addition to tribunal judiciary.
- 4.14 If the First-tier Tribunal is selected as the appropriate body to hear appeals then it would operate under the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 which provide flexibility for dealing with individual cases. The General Regulatory Chamber rules can be found at:  
<https://www.gov.uk/government/publications/general-regulatory-chamber-tribunal-procedure-rules>

- 3. Do you consider that the First-tier Tribunal is an appropriate destination for the handling of appeals against decisions by the Secretary of State?**
- 4. Do you consider that the General Regulatory Chamber Rules will suit the handling of these appeals? If not, why not?**
- 5. Do you agree that the right to appeal should apply to all decisions listed at 4.12? Are there any others that should be added?**
- 6. Do you have any other comments on the new UK GI schemes, or the wines and spirits regulations, as set out in this document?**

## 5. Summary of consultation questions

1. What should UK logos of the PDO, PGI and TSG schemes represent, and how might this be reflected in their design?
2. Is three years an appropriate adoption period for existing UK GI holders to update their packaging to reflect the new logo? If not, how long should the adoption period last?
3. Do you consider that the First-tier Tribunal is an appropriate destination for the handling of appeals against decisions by the Secretary of State?
4. Do you consider that the General Regulatory Chamber Rules will suit the handling of these appeals? If not, why not?
5. Do you agree that the right to appeal should apply to all decisions listed at 4.12? Are there any others that should be added?
6. Do you have any other comments on the new UK GI schemes, or the wines and spirits regulations, as set out in this document?

## 6. Timeline

The consultation runs for 4 weeks from 4 October to 1 November 2018.

The consultation response will be published on [www.gov.uk](http://www.gov.uk) within 12 weeks of the consultation closing.

To submit your consultation response, please complete the questionnaire on Citizen Space (our on-line consultation tool): <https://consult.defra.gov.uk/food/consultation-on-uk-geographical-indications-scheme/>

Alternatively, you can respond by email to [GI\\_scheme\\_consultation@defra.gsi.gov.uk](mailto:GI_scheme_consultation@defra.gsi.gov.uk) or by post to:

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