



Law Society
of Scotland

Consultation Response

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

October 2018



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Society's Intellectual Property Law Sub-committee welcomes the opportunity to consider and respond to the Department for Environment, Food & Rural Affairs' *consultation on establishing UK Geographical Indications (GI) schemes after EU Exit*.¹ The Sub-committee has the following comments to put forward for consideration.

General remarks

We welcome the introduction of a UK scheme for protecting geographical indications (GIs) following the UK's withdrawal from the EU. The current EU rules safeguard the authenticity of regional and traditional products. These benefit producers in particular regions, or who manufacture products with a traditional character,² by offering specific protection to those products through the right to use a particular designation of origin, geographic indicator or guarantee of traditional speciality. It can therefore offer a way of preserving traditional industries, often made up of smaller/family-run businesses and sustaining employment vital to regional economies. By preserving the integrity of products and manufacturing processes, the measures offer consumers a guarantee of quality and the knowledge that they are supporting the preservation of cultural heritage.

¹https://consult.defra.gov.uk/food/consultation-on-uk-geographical-indications-scheme/supporting_documents/UK%20GI%20scheme%20consultation%20document.pdf

² This note does not extend to wines and spirits, nor to the proposed "product of island farming" designation.

The protections within the existing framework are as follows:

- a) Protected Designations of Origin (PDO): produced, processed *and* prepared in a specific geographical area, using the recognised know-how of local producers and ingredients from the region concerned
- b) Protected Geographic Indications (PGI): quality or reputation is linked to the place or region where it is produced, processed or prepared, although the ingredients used need not necessarily come from that geographical area
- c) Geographical Indications of Origin for Spirit Drinks (GI's): having a given quality, reputation or other characteristic that is essentially attributable to geographic origin.
- d) Traditional Speciality Guaranteed (TSG): having a traditional character, either in the composition or means of production, without a specific link to a particular geographical area

Response to questions

Q1. What should UK logos of the PDO, PGI and TSG schemes represent, and how might this be reflected in their design?

We consider that this question is more a matter for producers themselves, rather than for lawyers. However, we note that the logos on spirit drinks are optional at present.

Q2. 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?

As with the previous question, we do not consider that we are best placed to comment.

Q3. Do you consider that the First-tier Tribunal is an appropriate destination for the handling of appeal against decisions of the Secretary of State?

We consider that the first-tier tribunal is an appropriate forum for the handling of appeal decisions. It provides cost efficiencies and flexibility, which may be of particular importance to SME's who are likely to be represented within producer groupings. In addition, we note that the Tribunal already deals with food cases.

Q4. Do you consider that the General Regulatory Chamber Rules will suit the handling of these appeals? If not, why not?

We are content the General Regulatory Chamber Rules are appropriate for handling of these appeals. We note that the rules allow for the hearing of evidence and the possibility of further appeal.

Q5. Do you agree that the right to appeal should apply to all decisions at 4.12? Are there any others that should be added?

The proposals would give rights to appeal: administrative decisions that the application does not meet the necessary requirements; the granting or refusal of an application after opposition; a decision to refuse or grant amendments to the specification of goods after registration; and a decision to cancel a GI. We consider that these are sufficient and appropriate.

Q6. Do you have any other comments on the new UK GI schemes, or wines and spirits regulations set out in this document?

We are concerned that the paper, while referring to automatic recognition of UK GI's is silent on what might happen to EU GI's currently protected in the UK under the EU system. If there is a delay while EU products reapply for recognition, there will be an opportunity for inferior substitutes and imitations to enter the market, harming consumers and causing disruption. IT will also harm those UK businesses which import EU GI products from overseas.

In practical terms it is important to recognise that if a new UK GI logo is to be created, it will need to be publicised and supported in the same way as the EU logos are if it is to provide corresponding benefits. Such logos operate on the basis of goodwill: unless consumers in the UK and overseas understand what the protection signifies, it will be of little value. It will be important for the Government to provide support to small producers in this regard.

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