EXPLANATORY MEMORANDUM TO

THE AGRICULTURAL PRODUCTS, FOOD AND DRINK (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. 1661

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs ("Defra") and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This statutory instrument amends retained EU food and drink regulations concerning geographical indication ("GI") schemes. It is subject to the made-affirmative procedure as the provisions contained need to enter into force as soon as the transition period ends, but for timing reasons, could not be included in previous secondary legislation.

2.2 Primarily, the instrument provides interim protection of third country GIs and traditional wine terms agreed in continuity trade agreements between the UK and third countries, but which have not yet been ratified. These are termed here as "bridging arrangements". This instrument also includes some other minor amendments which needs to enter in to force at the end of the transition period, including on wine import certifications, US wine names of origin, the importing of organic food and feed, ongoing protection of US and Mexican product designations, the functionality of retained spirits drinks regulations and adding a new class of GI to support the UK-Japan trade agreement. These are explained in turn in section 7.

What are Geographical Indications?

2.3 GIs are a form of intellectual property protection for the names of food, drink and agricultural products with qualities or characteristics which are attributable to the place they are produced and/or the traditional methods by which they are made. UK examples include: Scotch Whisky, English and Welsh Wine, Welsh Lamb and Lough Neagh Eels. Having GI status gives assurance to consumers that products are genuine and enables producers to better promote and market their products.

2.4 GI scheme award designations are Protected Designation of Origin (PDO), Protected Geographical Indication (PGI) and Traditional Speciality Guaranteed (TSG). The PGI designation means that some elements of production and/or raw materials can take place outside the defined geographical area, whilst a PDO designation requires all aspects of production, including sourcing materials, to take place within the defined geographical area. The TSG designation is for a product made to a traditional recipe or method, but it does not have to be made in a specific area. There are four GI schemes; agricultural products and foodstuffs (agri-food), spirit drinks, wines and aromatised wines.

Explanations

What did any relevant EU law do before exit day?

2.5 The retained EU legislation amended by this instrument creates an EU framework to protect GI products. This enables applications to be made to register new product names as GIs and traditional wine terms, which are listed under GI product classes (categories), and to amend or cancel existing GIs or terms. This framework ensures all products protected by GI schemes or wine terms receive legal protection from imitation or evocation in EU member states. The GI schemes ensure all EU Member States are compliant with the GI elements of the World Trade Organization ("WTO") Trade Related Aspects of Intellectual Property Right ("TRIPS") agreement obligations.

2.6 The specific provisions amended by this instrument, have until now been covered legislatively in the UK in being an EU member state.

2.7 GIs that were protected in the UK under international agreement, were covered under ratified international agreement made by the EU. Whilst GI agri-food protection classes have been stipulated by the relevant EU regulation.

2.8 Equally, EU wine laws set out a basis to protect wine names of origin protected in the EU-USA wine trade agreement.

2.9 In respect of the wine import provisions, EU legislation requires that, subject to certain *de-minimis* exceptions, wine imports to the EU should be covered by a certificate, known as a VI1.

2.10 On the spirits drinks provisions, the retained EU legislation that this instrument amends provides for the protection of geographical indications of spirit drinks, and also for specific product designations that are protected by agreements with the USA and Mexico, both of which are being transitioned as UK agreements.

2.11 With regards to the organic provisions, organic food has been strictly regulated in EU Member States by EU regulations. These set out the requirements for organic production, processing, labelling and imports, and the inspection systems that must be in place to ensure the requirements are met. The Regulations apply to organic food, feed and vegetative propagating material or seeds for cultivation.

Why is it being changed?

2.12 This instrument will address deficiencies in retained EU legislation arising from EU Exit. It is required to ensure that the regulations are operable in the UK (as provided for by the European Union (Withdrawal) Act 2018). The retained direct EU legislation being amended by this statutory instrument is set out in the legislative context section of this document.

2.13 The 'bridging arrangements' are required to support the commitments the UK has made under trade continuity agreements. The other amendments in this instrument are mostly of technical operability nature as result of the UK leaving the EU.

What will it now do?

2.14 Bridging Arrangements: This instrument will allow the UK to use temporary 'bridging arrangements' to implement protection of third country GIs where a trade

continuity agreement has been agreed, but not ratified, at the end of the transition period.

2.15 New trade agreements: This instrument adds an additional GI product category (class) to provide continuity of protection for Japanese product Kumamoto rush, which is currently protected under the EU-Japan trade agreement and will continue to be protected under the UK-Japan Comprehensive Economic Partnership Agreement.

2.16 Spirits: This instrument will provide for the ongoing protection of US and Mexican product designations to reflect the transitioned agreements, and enable the retained EU spirit drinks regulations for GIs to function correctly.

2.17 Wines: This instrument will provide for the ongoing protection of US wine names of origin by providing a firm legal basis for enforcement of protections.

2.18 Transitional provisions are also being introduced for wine import certification to ensure that the EU has sufficient time to adjust to new wine import requirements they will face arising from EU Exit.

2.19 Organics: The current organic standards will be maintained at the end of the transition period. The requirement for certification and traceability of organic food and feed products will continue. The instrument will amend the list of EU and EEA control bodies in retained organic regulations to ensure the correct details are listed. This will allow GB to continue to import organic food and feed from the EU and EEA. The instrument also provides a six-month easement on the requirement on Certificate of Inspects for organic imports from the EU, the EEA and Switzerland.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This is an urgent procedure instrument being laid under paragraph 5(3) of Schedule 7 of the European Union (Withdrawal) Act 2018 (EUWA). Part 2 of Annex 1 of this Explanatory Memorandum contains further details on the reasons for this.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 24 of the European Union (Withdrawal) Act 2018) and the extent and application is as detailed in section 4 below.

4. Extent and Territorial Application

4.1 The territorial extent and application of this instrument matches the extent and application of the legislation being amended.

4.2 As regards the retained direct EU legislation amended by this instrument in Part 2, and the retained direct EU legislation amended by the domestic regulations amended by Part 3 of this instrument, this is incorporated into domestic law under section 3 of the European Union (Withdrawal) Act 2018 save insofar as it applies to Northern Ireland for the purposes of the Protocol. Accordingly, those elements of this instrument will be of no practical application in Northern Ireland as the Protocol instead applies the EU law provisions in Northern Ireland.

5. European Convention on Human Rights

5.1 Victoria Prentis MP, Parliamentary Under-Secretary of State has made the following statement regarding Human Rights:

"In my view the provisions of the Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 This is an urgent procedure instrument being laid under paragraph 5(3) of Schedule 7 of the European Union (Withdrawal) Act 2018 (EUWA). Part 2 of Annex 1 of this Explanatory Memorandum contains further details on the reasons for this.

6.2 The retained direct EU legislation being amended by this statutory instrument is as follows:

i. Commission Regulation (EC) No 1416/2006

ii. Commission Regulation (EC) No 936/2009

iii. Regulation (EC) No 1151/2012 of the European Parliament and of the Council

iv. Commission Implementing Regulation (EC) No 716/2013

v. Regulation (EC) No 1308/2013 of the European Parliament and of the Council

vi. Regulation (EU) No 251/2014 of the European Parliament and of the Council

vii. Commission Implementing Regulation 668/2014

viii. Commission Delegated Regulation (EU) 2019/33

ix. Regulation (EU) 2019/787 of the European Parliament and of the Council

6.3 The domestic secondary legislation being amended is:

i. The Spirit Drinks Regulations 2008

ii. The Trade Marks (Amendment etc.) (EU Exit) Regulations 2019

iii. The Organic Production (Control of Imports) (Amendment) (EU Exit) Regulations 2019

iv. The Food and Farming (Amendment) (EU Exit) Regulations 2019

v. The Agriculture (Legislative Functions) (EU Exit) (No. 2) Regulations 2019

vi. The Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations 2020

7. Policy background

What is being done and why?

GI scheme bridging arrangements

7.1 Defra is currently working to transition EU-third country FTAs into UK-third country FTAs through the continuity trade agreement programme. Some third countries are unable to provisionally apply trade agreements and have long ratification timelines, creating a gap in GI protection between the end of the transition period and the international agreement entering into force.

7.2 Current GI retained EU law requires the UK to have a ratified international *agreement* (such as an FTA) in place to be able to protect third country GIs included in trade deals. At present the UK would not be able to use political *arrangements* (such as Memoranda of Understanding) to protect a third country's GIs during any such gap.

7.3 The most effective way to resolve this issue this will be to include a provision in this instrument to allow the UK to protect GIs via "bridging arrangements". These involve a political commitment to abide by the terms and obligations under the EU-third country agreement, as amended by the UK-third country agreement, during the time it takes for the UK-third country agreement to be brought into force. The conditions and length of duration of the bridging arrangements are set out in a signed document appropriate to the situation in each case.

7.4 In the case of bridging arrangements signed within nine months of exit day, this legislation will also permit the GIs covered by such arrangements to maintain their original date of registration on the EU scheme, and hence their priority over any trade marks filed in the period between EU Exit and the coming into force of the bridging arrangements.

Addition of a new GI product class

7.5 The UK has agreed to protect Kumamoto Rush under the UK-Japan Comprehensive Economic Partnership Agreement (CEPA). Kumamoto Rush was listed in the EU-Japan agreement and is therefore protected in the EU. However, Kumamoto Rush does not fit within any of the GI product categories (classes) which the UK has inherited from the EU. The GI product categories need to be amended in order to make our retained legislation clear in providing continuity of protection for Kumamoto Rush. This SI therefore adds a further product category (class) of 'rush' to Annex XI to Commission Implementing Regulation 668/2014.

Additional wines amendments

7.6 The UK-USA Wines Agreement enters into force on 1 January 2021. The Spirit Drinks, Wine and European Withdrawal (Consequential Modifications) (Amendment) (EU Exit) Regulations 2020 extends the scope of enforcement provisions contained in the Wine Regulations 2011 to include Regulation 1416/2006 which provides a basis for protecting US wine names of origin. This SI amends Regulation 1416/2006 to make it operable and therefore a suitable basis for enforcement.

7.7 Retained EU Regulation 1308/13 of the European Parliament and the Council sets out, inter alia, rules on the import of wine. It requires that wine imported to the UK will have to be covered by the appropriate VI1 certification. The VI1certificate provides key information on the composition of the shipment including, analytical characteristic of the wine, the quantity of wine being shipped and the consigner and consignee details. The certificate must also be signed by a competent body in the exporting country which the EU has recognised. This will be a new requirement for the EU to adopt and there was significant concern that they would not have the required measures in place at the end of the transition period. The UK imports about half of its wine from the EU and therefore this could have a significant impact on our market. In order to ensure continuity in the trade of EU wine, this SI amends Article 90 (3) of Regulation 1308/13 to introduce a six-month transitional period where EU wines can continue to enter the UK under the current arrangements.

Additional spirit drinks amendments

7.8 Regulation (EU) 2019/787 became applicable in June 2019 and replaced Regulation (EC) 110/2008 in respect of provisions on geographical indications for spirit drinks. Delegated and implementing regulations made under it by the European Commission will revoke the GI provisions in the implementing regulation for 110/2008, Commission Regulation 716/2013, but not until after the transition period. This instrument will revoke those provisions which will not be needed as retained legislation.

7.9 Additional operability amendments to Regulation (EU) 2019/787 are included in this instrument, beyond those made in The Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations 2020, to ensure that the retained regulation will continue to function after the transition period.

7.10 Commission Regulation (EC) 936/2009 provides an obligation to protect specific spirit drinks product designations that are named in the EU agreements with the US (Bourbon and Tennessee Whisky) and Mexico (Tequila and Mezcal). It was amended by The Food and Farming (Amendment) (EU Exit) Regulations 2019, but only in relation to the US and not in relation to Mexico, because, at the time it was made, it was not certain whether the UK-Mexico continuity agreement would be concluded in time for what was then Exit day, whereas the position on the UK-US continuity agreement was certain (signed on 31 January 2019). The Mexican agreement will have been signed by both parties prior to the end of the transition period, and so the retained regulation needs to be updated to reflect its application to both US and Mexican agreements once again. This involves revoking the earlier amendments in respect of the US product designations, and making operability amendments to 936/2009 in this instrument.

7.11 The Spirit Drinks Regulations 2008 are being amended by The Spirit Drinks, Wine and European Withdrawal (Consequential Modifications) (Amendment) (EU Exit) Regulations 2020, to provide the enforcement of the above obligations in Regulation (EC) 936/2009. Further adjustments are being made to ensure that these amendments will function correctly post-IP completion day, taking into account the Northern Ireland Protocol.

Organics

7.12 This instrument amends the Organic Production (Control of Imports) (Amendment) (EU Exit) Regulations 2019 to reflect the UK Government's decision to continue recognising the EU and EEA as having equivalent organic standards until 31 December 2021, and ensuring that GB organic operators will be able to continue importing organic food and feed from the EU and EEA as they do now.

7.13 Further, extending the period for which GB will not require a Certificate of Inspection for organic imports from the EU, EEA and Switzerland by a period of six months until 1 July 2021 will provide additional time for ports to adjust to the new GB organic importing process from 1 January 2021.

7.14 In order for organic goods from the EU and the EEA to be imported to and freely circulated in GB, they must be certified by a control body recognised by GB. The amendments made by this instrument to the list of EU and EEA and Switzerland control bodies and authorities reflects the EU's list of control bodies and authorities in the organic sector as of 14 October 2020, which is the most recent update.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under the powers of paragraphs 5(3) and 21 of Schedule 7 to the European Union (Withdrawal) Act 2018. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 This is not a consolidating instrument.

10. Consultation outcome

10.1 On GIs content: there has been no need for a consultation regarding the content of this SI as there are no other viable policy options available to consultees.

10.2 On Organics content: We have worked with the United Kingdom Organic Certifiers Group (UKOCG) as industry representatives to ensure their awareness of the changes in this instrument and on the future implementation of the UK Regulations following the end of the transition period.

10.3 On wines content: We have worked closely with the Wine and Spirits Trade Association, the Food Standards Agency and Food Standards Scotland in work making EU wine laws operable. Measures provided in this SI are supported by the industry and primary enforcement bodies.

11. Guidance

11.1 Bridging arrangements, GI product classes, wine and spirit drink content: Producers do not need to take any specific action in relation to these provisions. For non-UK producers who wish to apply for protection in the UK, the Government will be publishing wider guidance on the UK GI schemes, for example how to apply for, amend or cancel a GI award. This will be publicly available on GOV.UK on the day that the schemes enter into force.

11.2 Organics content: the changes made by this instrument are included in the guidance shared with the UK organic sector. We will continue to engage with them to ensure they are aware of these changes.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because as its purpose is to maintain existing regulatory standards and so there is expected to be minimal impact on business.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses (employing up to 50 people). The bridging arrangements, GI product classes, wines,

and spirit drinks content of this legislation places no additional burdens on small businesses. For the organics content, the approach taken is to retain the EU Regulations relating to organic policy as they apply directly before the end of the transition period. This instrument ensures the Regulations will be operable and therefore any direct impact will be minimal.

14. Monitoring & review

14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required. Defra will however monitor and review the impact of the instrument as part of its standard policy-making procedures and will ensure that the provisions are adhered to and that there are no unintended consequences.

15. Contact

15.1 For GIs, wines and spirt drinks content: Madhulika Goodey at the Department for Environment, Food and Rural Affairs, Telephone: 02080266957 or email: Madhulika.goodey@defra.gov.uk can be contacted with any queries regarding the instrument. For organics content: Benjamin Marsh at the Department for the Environment, Food and Rural Affairs, Telephone: 073854148231.

15.2 For GIs, wines and spirit drinks content: Ananda Guha, Deputy Director for Food Exports, Promotions and Partnerships, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 For organics content: Ruhena Ahmed, Deputy Director for Farming Food Sectors and Trade, at the Department of the Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.4 Victoria Prentis MP, Parliamentary Under-Secretary of State at the Department for Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

1.1 Victoria Prentis MP, Parliamentary Under-Secretary of State, at the Department for Environment, Food and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2020 does no more than is appropriate".

1.2 This is the case because the amendments made by the instrument are the minimum required to ensure that existing domestic legislation remains operable after the transition period. The amendments are predominantly technical in nature and do no more than is necessary to ensure that domestic law continues to function effectively. See sections 7.1 to 7.14 of this explanatory memorandum.

2. Good reasons

2.1 Victoria Prentis MP, Parliamentary Under-Secretary of State at the Department for Environment, Food and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

2.2 These are: that without this instrument, the EU Regulations in section 6 of this explanatory memorandum, which are converted into domestic law by the European Union (Withdrawal) Act 2018, will not work properly, and that it is appropriate, after the end of the transition period.

3. Equalities

3.1 Victoria Prentis MP, Parliamentary Under-Secretary of State, at the Department for Environment, Food and Rural Affairs has made the following statement(s):

"The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

3.2 Victoria Prentis MP, Parliamentary Under-Secretary of State, at the Department for Environment, Food and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, Victoria Prentis, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

5. Urgency

5.1 Victoria Prentis MP, Parliamentary Under-Secretary of State, at the Department for Environment, Food and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view by reason of urgency, it is necessary to make the Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2020, without a draft of the instrument containing the regulations being laid before, and approved by a resolution of, each House of Parliament."

5.2 This is because: the amendments described in Section 2 need to be in place for the end of the transition period, otherwise the transitional provisions would not be in place, retained EU legislation would not be fully operable, we would not be able to meet our international obligations and this would not reflect government policy.