EXPLANATORY MEMORANDUM TO

THE COMMON ORGANISATION OF THE MARKETS IN AGRICULTURAL PRODUCTS (PRODUCER ORGANISATIONS AND WINE) (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

2019 No. 1343

AND

THE COMMON AGRICULTURAL POLICY (MARKET MEASURES, NOTIFICATIONS AND DIRECT PAYMENTS) (MISCELLANEOUS AMENDMENTS) (EU EXIT) REGULATIONS 2019

2019 No. 1344

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 Explanatory Memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This explanatory memorandum covers two statutory instruments which together amend provisions of retained EU legislation relating to the EU Common Agricultural Policy ("CAP") and the Common Organisation of Agricultural Markets ("CMO"). These instruments will address operability issues in the retained EU legislation created by the UK leaving the EU. These instruments also amend a UK statutory instrument concerning part of the retained EU CAP legislation. These instruments will ensure that the relevant rules in retained EU legislation can continue to operate effectively after EU Exit.

2.2 The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2019 amend retained EU legislation and a UK statutory instrument relating to the CMO in areas of reserved competence.

2.3 The Common Agricultural Policy (Market Measures, Notifications and Direct Payments) (Miscellaneous Amendments) (EU Exit) Regulations 2019 amend CMO rules in areas of devolved competence and make further changes to a UK statutory instrument relating to the financial discipline mechanism.

Explanations

What did any relevant EU law do before exit day?

2.4 The retained EU regulations amended by these instruments relate principally to the CMO. The CMO is the framework for the market measures provided for under the Common Agriculture Policy ("CAP"). The CMO was set up as a means of meeting the objectives of the CAP (Article 40 Treaty on the Functioning of the European Union), in particular to stabilise markets, ensure a fair standard of living for agricultural producers and increase agricultural productivity. It has over time broadened out to provide a toolkit that enables the EU to:

- manage market volatility;
- incentivise collaboration between and competitiveness of agricultural producers; and
- facilitate trade.

2.5 The specific CMO measures amended by these instruments set out rules for producer organisations in the fruit and vegetable, and milk and milk products sectors; wine imports and quality policy; and production and price reporting. The specific retained EU Regulations amended by these instruments are outlined in section 1.2 of Annex 2 of this Explanatory Memorandum.

2.6 The Common Agricultural Policy (Market Measures, Notifications and Direct Payments) (Miscellaneous Amendments) (EU Exit) Regulations 2019 further amends a domestic regulation relating to the EU CAP Financial Discipline Mechanism. This mechanism enables the reimbursement of contributions made by UK farmers towards the 2018 EU crisis reserve. The EU crisis reserve is funded annually through a mandatory deduction to direct payments recipients in receipt of over €2000. This deduction is then periodically reimbursed the following year if unspent, to eligible direct payments recipients.

Why is it being changed?

2.7 After EU Exit, without amendment, the retained EU legislation referenced above will contain inoperable rules that would prevent the UK government and the Devolved Administrations from being able to deliver the market support schemes to the agricultural sector. These instruments use powers in the European Union (Withdrawal) Act 2018 ("the EUWA") to correct these deficiencies and to enable functions to be exercised by UK public authorities.

What will it now do?

2.8 The regimes will continue to function after the UK's withdrawal from the EU in a similar way to how they did previously. These instruments change the identity of the bodies carrying out the specified functions and convert the EU procedures to UK procedures, as appropriate. A full explanation of the changes being made within these instruments can be found in Annex 2 to this Explanatory Memorandum.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Minister of State for Agriculture, Fisheries and Food, Rt Hon George Eustice MP, has agreed for this instrument to be made subject to the urgent 'made affirmative' procedure. The Ministerial statement in Part 2 of the Annex to this Explanatory Memorandum sets out the reasons for this decision.

3.2 The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2019 amend an existing EU Exit SI – the Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019 (SI 2019/828) – to correct minor errors. Defra decided not to revoke or remake the existing instrument due to the minor nature of the errors corrected by this instrument.

3.3 Defra has decided not to issue this instrument free of charge to all known recipients of SI 2019/828 as, given the nature of the correcting provisions in this instrument and the proportion that they represent of the whole instrument, it would be disproportionate to apply the free issue procedure to SI 2019/828.

3.4 Defra has complied with the requirement stated in section 4.7.6 of Statutory Instrument Practice (SIP) to consult with the SI Registrar, The National Archives on this matter.

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)

3.5 The territorial application of these instruments includes Scotland and Northern Ireland.

3.6 These instruments have effect in the whole of the UK and, as such, the English Votes for English Laws procedure is not applicable to these instruments.

4. Extent and Territorial Application

4.1 The territorial extent of these instruments is the UK.

4.2 The territorial application of these instruments is the UK.

5. European Convention on Human Rights

5.1 The Minister of State for Agriculture, Fisheries and Food, the Rt Hon George Eustice MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2019 and the Common Agricultural Policy (Market Measures, Notifications and Direct Payments) (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The European Union (Withdrawal) Act 2018 converts EU law as it stands at the moment of EU Exit into UK law. It also gives temporary powers to make secondary legislation, to enable corrections to be made to laws that would otherwise no longer operate appropriately once the UK has left the EU. This includes both UK law and directly applicable EU law. These instruments are accordingly being made to correct relevant legislation to ensure it operates effectively after EU Exit. Among other things, they rely upon those correcting powers to allow functions exercisable by the European Commission (the "Commission") to be exercisable instead by UK bodies, as this is an aspect of the law that will otherwise not operate effectively after EU Exit.

6.2 The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2019 amend reserved CMO provisions. The Common Agricultural Policy (Market Measures, Notifications and Direct Payments) (Miscellaneous Amendments) (EU Exit) Regulations 2019 amend devolved provisions relating to CAP (including the CMO). The corrections made by this instrument will create legislative regimes for the UK that will respect the UK devolution settlements. In most instances, where provisions are devolved, the powers will be transferred to the relevant Ministers or department of the constituent nations, in some cases allowing the Secretary of State to act on behalf of: Scottish Ministers; Welsh Ministers; or the Department of Agriculture, Environment and Rural Affairs ("DAERA") for Northern Ireland, where the Ministers or Department consent.

6.3 The ability of the Secretary of State to be able to act for one or more of the Devolved Administrations will allow for powers to be exercised uniformly across the UK or across certain constituent nations, where it is convenient to do so. The ability of the Secretary of State to act with the consent of Ministers does not apply to Wales in certain cases. This is because, in those cases, allowing the Secretary of State to act on behalf of Wales would have implications in relation to devolved competence for Wales, due to certain provisions in the Welsh devolution settlement.

6.4 As part of the process of the UK's withdrawal from the EU, Defra has introduced a series of instruments in order to amend retained EU Regulations relating to the CAP to ensure its operability after EU Exit. These instruments detailed in this explanatory memorandum are therefore a part of this wider legislative programme.

7. Policy background

What is being done and why?

7.1 These instruments make the appropriate corrections to retained EU legislation to ensure that legislation relating to the CAP (including the CMO) can operate effectively after EU Exit. The approach when changing retained EU law has been to ensure that legislation remains as close to the current system as possible; changes are largely technical in nature.

7.2 A detailed explanation of the changes being made by these instruments can be found in section 2 in Annex 2 of this explanatory memorandum.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

8.1 These instruments are being made using the power in section 8(1) of, and paragraph 21 of Schedule 7 to, 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 UK from the EU. 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 Defra does not intend to consolidate the relevant legislation at this time.

10. Consultation outcome

10.1 No formal public consultation was carried out about these specific instruments. However there has been targeted consultation through engagement with representative bodies, as required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council, during the preparation and evaluation of the Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2019 so far as it relates to food. This lays down the general principles and requirements of food law. No changes were made to the proposed approach on the basis of this engagement.

10.2 Defra has also engaged with relevant stakeholders on its approach to CMO legislation under the EUWA, including on these instruments, to familiarise them with the legislation before it is laid before Parliament.

10.3 In addition, Defra has engaged with stakeholder umbrella organisations regarding CAP agriculture policy. Defra has met approximately monthly with the Rural Payments Agency's ("RPA") Industry Partnership Group ("IPG") and also held a bespoke EU Exit Contingency Planning meeting on 15 March 2019 with the same audience to update farming and land management stakeholders on the Government's plans for the UK's withdrawal from the EU, including operational readiness planning for a no deal EU Exit. Stakeholders have been informed of the plans to make both retained EU CAP legislation and existing domestic CAP Regulations fully operable at the point of the UK's withdrawal from the EU, to enable Defra and the Devolved Administrations to continue to deliver ongoing CAP Pillar 1 and Pillar 2 commitments to the agriculture sector in 2019 in the event of a non-negotiated EU Exit. No concerns were raised. Stakeholders present were the:

- Tenant Farmers Association;
- Countryside Land and Business Association;
- Farming Community Network;
- Institute of Agricultural Secretaries and Agents;
- British Institute of Agricultural Consultants;
- National Farmers' Union.

10.4 Defra has engaged the Devolved Administrations on its approach to CAP legislation under the European Union (Withdrawal) Act 2018, including on these instruments, to

familiarise them with the legislation ahead of laying. Defra has engaged with the Devolved Administrations during the drafting of both of these instruments, in relation to both reserved and devolved content. The Common Agricultural Policy (Market Measures, Notifications and Direct Payments) (Miscellaneous Amendments) (EU Exit) Regulations 2019 and the policy reflected in that instrument, has been developed in collaboration with officials in the Scottish and Welsh Devolved Administrations, and DAERA in Northern Ireland.

11. Guidance

11.1 Defra is not producing any specific guidance on these instruments, as they only make technical changes to correct deficiencies in retained EU law arising from the UK's withdrawal from the EU. Defra is however working directly with individual businesses to ensure they understand the implications of these instruments on their businesses.

12. Impact

12.1 There is expected to be no, or no significant impact on business, charities or voluntary bodies as a direct result of these instruments. Decision making powers will be transferred from the Commission to appropriate UK public authorities. The impact of these new arrangements will be dependent on how these powers are exercised in the future, after EU Exit, which is outside of the scope of these instruments.

12.2 There is expected to be no, or no significant, impact on the public sector as a direct result of these instruments.

12.3 An Impact Assessment has not been prepared for these instruments as no, or no significant impact on the private or voluntary sectors is foreseen. The purpose of these instruments is to maintain existing regulatory standards and market access so there is expected to be minimal impact on business. The changes made by these instruments are intended to maintain the current position in terms of business's regulatory obligations. There should therefore be no changes in business practices and no changes in the direct costs faced by businesses as a direct result of these instruments. As a result we are confident that this change in regulation falls below the £5m per annum threshold for net direct costs to business.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No disproportionate impacts are expected to impact small and micro businesses.

14. Monitoring & review

14.1 As these instruments are made under the powers in the EUWA, no review clause is required. Defra and its agencies will, however, monitor and review the impact of the instruments as part of its standard policy-making procedures, and will ensure that the provisions are adhered to.

15. Contact

15.1 Pamela Frost at Defra: 020 802 65991 or email: pamela.frost@defra.gov.uk can be contacted with any queries regarding these instruments.

15.2 Fiona James and Elen Shepard, Deputy Directors for CAP EU Exit Preparedness, at Defra can confirm that this explanatory memorandum meets the required standard.

15.3 Rt Hon George Eustice MP, the Minister of State for Agriculture, Fisheries and Food at Defra, can confirm that this explanatory memorandum meets the required standard.

Annex 1

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 2018 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 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence.	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
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 s. 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 1972.	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA 1972, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under s. 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 1972.	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 The Minister of State for Agriculture, Fisheries and Food, Rt Hon George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2019 and the Common Agricultural Policy (Market Measures, Notifications and Direct Payments) (Miscellaneous Amendments) (EU Exit) Regulations 2019 do no more than is appropriate".

1.2 This is the case because: the changes made by these instruments are the minimum required to ensure that existing legislation relating to the UK remains operable after the UK leaves the EU. The changes are predominantly technical in nature and do no more than is strictly necessary to ensure that UK law continues to function effectively. See section 7 in the main body of this Explanatory Memorandum.

2. Good reasons

2.1 The Minister of State for Agriculture, Fisheries and Food, Rt Hon George Eustice MP, 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 these instruments, and I have concluded they are a reasonable course of action".

2.2 These are: the changes to retained EU legislation and to existing UK legislation are necessary to ensure that the Common Agricultural Policy ("CAP") arrangements can continue to operate seamlessly and without ambiguity after EU Exit. See section 7 in the main body of this Explanatory Memorandum.

3. Equalities

3.1 The Minister of State for Agriculture, Fisheries and Food, Rt Hon George Eustice MP, has made the following statements:

"The instruments do 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 The Minister of State for Agriculture, Fisheries and Food, Rt Hon George Eustice MP, has made the following statement regarding use of legislative powers in the main body of the European Union (Withdrawal) Act 2018:

"In relation to the instruments, I, George Eustice MP, 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 The Minister of State for Agriculture, Fisheries and Food, Rt Hon George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

5.2 "In my view by reason of urgency, it is necessary to make The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2019 and The Common Agricultural Policy (Market Measures, Notifications and Direct Payments) (Miscellaneous Amendments) (EU Exit) Regulations 2019, without a draft of the instruments containing the regulations being laid before, and approved by a resolution of, each House of Parliament."

5.3 This is because: if these instruments are not in force on exit day, the retained EU legislation would contain inoperable provisions that would prevent the UK Government and, where applicable, the Devolved Administrations, from being able to operate and/or make any necessary technical changes to each policy regime.

5.4 The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2019 are required to ensure that EU wines can continue to be imported from exit day. EU wines represent approximately 50% of wines sold in the UK so there is a high risk that any disruption would impact on businesses who rely on EU wine as part of their business, particularly on small and medium-sized enterprises including importers, restaurants, off licences and others. Such disruption is also likely to have a significant adverse effect on Government revenues from excise returns, and consumer choice in wine, including household names such as Champagne, Bordeaux, Prosecco and Rioja.

5.5 These instruments also include provisions giving the Secretary of State powers to make decisions concerning geographic indication (GI) arrangements for wine products. This will include scope to approve or reject wine GI or traditional term applications or authorise their cancellation. These provisions are fundamental to the UK having a viable GI scheme for wine, which is necessary to ensure that the UK meets its WTO obligations and is able to ratify certain wine trade agreements that have already been signed, such as those with Australia or the USA.

5.6 If these instruments are not in place on exit day, the UK Government and Devolved Administrations will not be able to operate the Fruit and Vegetable Producer Organisation Aid Scheme effectively, including to enforce the Scheme rules and to make payments to producer organisations, until the relevant provisions are made. This would cause delays to payments due under the Scheme, which may lead to significant issues for producer organisations that rely on such payments. It would also hamper the abilities of the UK Government and Devolved Administrations to monitor and enforce the use of payments already made under the Scheme.

5.7 The Common Agricultural Policy (Market Measures, Notifications and Direct Payments) (Miscellaneous Amendments) (EU Exit) Regulations 2019 are also

required to ensure that the UK Government and Devolved Administrations retain the power to require economic operators in several key sectors to provide market information that is needed to monitor consumer prices and market trends to get an early indication of any problems or crises resulting from EU Exit.

5.8 The UK Government and Devolved Administrations may also be unable to reimburse farmers with respect to the 2018 Basic Payment Scheme ("BPS") financial discipline adjustment, which is valued at approximately €39m in total for farmers in the UK.

Annex 2

Further detail on the amendments made by these Statutory Instruments set out in the main body of this Explanatory Memorandum

1. Regulations amended by the instruments detailed in this Explanatory Memorandum

1.1 The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2019 cover one main policy area: Common Market Organisation ("CMO"), the framework for market measures and responding to a market crisis in the agricultural sector, provided for under the Common Agricultural Policy ("CAP"). This instrument amends EU regulations in this policy area to ensure that, after EU Exit, functions currently carried out by the European Commission ("the Commission") will instead be carried out by the relevant public authority in the UK. The specific Regulations amended by this instrument are:

i. Commission Delegated Regulation (EU) No 880/2012 supplementing Council Regulation (EC) No 1234/2007 as regards transnational cooperation and contractual negotiations of producer organisations in the milk and milk products sector;

ii. Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products;

iii. Commission Delegated Regulation (EU) No 2016/232 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to certain aspects of producer cooperation;

iv. Commission Delegated Regulation (EU) 2017/891 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the fruit and vegetables and processed fruit and vegetables sectors and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to penalties to be applied in those sectors;

v. Commission Implementing Regulation (EU) 2017/892 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the fruit and vegetables and processed fruit and vegetables sectors; and

vi. Provisions of Commission Implementing Regulation (EU) No 543/2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors which have been repealed but which continue to operate by virtue of savings provisions in Commission Delegated Regulation (EU) 2017/891.

1.2 The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2019 further

amends one existing UK regulation, namely The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019.

1.3 These Regulations confer various legislative functions on the EU Commission so that it can develop the technical details required to operate a specific regime. Examples of these functions include: setting eligibility criteria, establishing recognition criteria for producer organisations, establishing key dates for submission of claims for aid, setting out rules for contractual negotiations in the milk sector, and laying down details of checks to be carried out to enable producer cooperation.

1.4 The Regulations further cover production and price reporting to the EU Commission and the setting up by the EU Commission of systems to capture that data. The information itself is used for market management purposes.

1.5 The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2019 also revokes all implementing acts adopted under Articles 97(3) and (4), 99, 106 and 115(2) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council that would otherwise form part of UK law by virtue of section 3(1) of the European Union (Withdrawal) Act 2018.

1.6 The Common Agricultural Policy (Market Measures, Notifications and Direct Payments) (Miscellaneous Amendments) (EU Exit) Regulations 2019 also makes amendments to provisions in the CMO. The specific regulations amended by this instrument are:

i. Commission Implementing Regulation (EU) No 543/2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors (including provisions which have been repealed but which continue to operate by virtue of savings provisions in Commission Delegated Regulation (EU) 2017/891);

ii. Commission Delegated Regulation (EU) 2017/891 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the fruit and vegetables and processed fruit and vegetables sectors and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to penalties to be applied in those sectors;

iii. Commission Implementing Regulation (EU) 2017/892 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the fruit and vegetables and processed fruit and vegetables sectors; and

iv. Commission Implementing Regulation (EU) 2017/1185 laying down rules for the application of Regulations (EU) No 1307/2013 and (EU) No 1308/2013 of the European Parliament and of the Council as regards notifications to the Commission of information and documents.

1.7 The Common Agricultural Policy (Market Measures, Notifications and Direct Payments) (Miscellaneous Amendments) (EU Exit) Regulations 2019 further amend one UK regulation relating to the Financial Discipline Mechanism, a different part of

the retained EU CAP: the Agriculture (Legislative Functions) (EU Exit) Regulations 2019.

2. Detail regarding the EU CAP provisions amended by these instruments

2.1 These instruments amend provisions relating to the Common Organisation of Agricultural Markets ("CMO"), the framework for market measures and responding to a market crisis in the agricultural sector, provided for under the EU Common Agricultural Policy ("CAP"). The CMO has developed over time to enable the EU to manage market volatility, encourage cooperation between and competitiveness of agricultural producers and to facilitate trade.

2.2 One instrument amends an existing EU Exit SI, specifically provisions regarding Financial Discipline Mechanism, a further part of the retained EU CAP. This mechanism enables the reimbursement of contributions made by UK farmers towards the 2018 EU crisis reserve.

2.3 The amendments made by these instruments will ensure that retained EU CAP law can continue to operate effectively after the UK's withdrawal from the EU.

2.4 Some of the retained EU legislation detailed in section 1 of this Annex is amended by both instruments detailed in this Explanatory Memorandum. The reason for this is that this legislation contains both provisions that Defra considers to fall within reserved competence and provisions that agreed by Defra and the Devolved Administrations to fall within devolved competence.

2.5 Detailed below are each of the policy areas amended by these instruments:

3. Producer cooperation

3.1 Regulation (EU) No 880/2012, and Regulation (EU) 2016/232, relate to producer cooperation. These build on the rules for recognition of producer organisations in the CMO, which are covered in the Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019. The amendments made by this instrument ensure that the concept of transnational producer organisations is omitted from the regulations, however UK based producer organisations will retain the powers to collaborate to negotiate contracts.

4. Producer organisations in the fruit and vegetables sector

4.1 Regulation (EU) 891/2017 and Regulation (EU) 892/2017 provide the detailed rules for the recognition of producer organisations in the fruit and vegetables sector and the operation of the Fruit and Vegetable Producer Organisation Aid Scheme, building on the framework legislation contained in Regulation (EU) No 1308/2013. These Regulations are amended by both instruments covered by this Explanatory Memorandum.

4.2 This legislation encourages groups of growers to come together to form producer organisations with the aim of planning production, concentrating supply and making the growers stronger in the marketplace. Specifically, these Regulations provide rules on the recognition of producer organisations and the terms and conditions of the Aid Scheme (including, among other things, the activities that can be funded under the

scheme, the amount of funding that can be claimed, and the requirements that producer organisations must meet). These Regulations also set out what Member States must do to ensure that aid is paid correctly.

4.3 Some provisions relating to import tariff policy are not amended as they are due to be disapplied by the Taxation (Cross-border Trade) Act 2018.

4.4 These instruments also amend the provisions on producer organisations in the fruit and vegetables sector in Regulation (EU) No 543/2011 which have been repealed but which continue to operate by virtue of savings provisions in Commission Delegated Regulation (EU) 2017/891, and remove provisions on producer groups in that Regulation which remain in force but do not apply to the UK in practice.

5. Special provisions for the imports of wine

5.1 Regulation (EU) No 1308/2013 requires that wines imported into the EU from a third country are, with a few exceptions, covered by a certificate.

5.2 To avoid any risk of disruption to wine supplies, the Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2019 contains a time limited transitional arrangement that would allow EU wine to enter the UK accompanied by other forms of documentation which provide evidence of the alcohol content and details of the amount of wine in the consignment, provided that the Secretary of State considers that EU wine meets UK marketing standards.

5.3 Changes are necessary to ensure that we can still import wine from the EU in the event that those imports fail to meet new UK import requirements after we leave the EU. Similarly changes are needed to ensure UK wine quality policy under the protected designation of origin or GI arrangements operate effectively and ensure that the UK is able to protect both its own GI interest and those of our trading partners where international trade agreements have been signed.

5.4 In terms of wine imports from the EU we are putting in place transitional measures that will allow the UK to import EU wine where this arrives without the specified wine import certification ("UK VI"). UK enforcement officials will therefore carry out checks based existing commercial and excise related documentation.

6. Wine PDOs and PGIs

6.1 Regulation (EU) No 1308/2013 provides the legal framework for the protection and cancelation of Protected Denominations of Origin ("PDOs") and Protected Geographical Indications ("PGIs") for wine.

6.2 Amendments included in the Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2019 will ensure that arrangements for the protection and cancelation of wine PDOs and PGIs will continue to function after we leave the EU. They will give the Secretary of State the power to approve a PDO, a PGI or a traditional term, or if necessary to cancel the protection of such appellations where compliance with required specifications is no longer guaranteed. It will also give the Secretary of State powers to protect UK PDOs and PGIs that have been registered by the Commission or

GIs or traditional terms that the UK has agreed to protect as part of an international trade agreement.

6.3 The amendments made by this instrument enable the Secretary of State to exercise certain powers in this legislation administratively rather than legislatively after EU Exit, as this is better suited to the domestic context.

6.4 Provisions will also be incorporated that will allow the Secretary of State the ability to cancel the protection of a PDO or a PGI where compliance with the corresponding product specification is no longer ensured. Similarly powers will be given to the Secretary of State to protect UK PDOs and PGIs that have been registered by the Commission or GIs that the UK has agreed to protect as part of an international trade agreement.

7. Notification requirements

7.1 Regulation (EU) 2017/1185 covers production and price reporting to the Commission and the setting up of systems to capture that data. The information itself is used for market management purposes and after exit day Defra and the Devolved Administrations intend to maintain the collection and use of this information in the UK. Much of this legislation is not being amended at this stage on the basis that once the UK leaves the EU there will no longer be requirements to report to the Commission. Similarly, clauses covering the setting up of Commission systems for multi Member State use will become redundant. Defra and the Devolved Administrations intend to review the operation of mechanisms for managing this data across the UK after EU Exit, and may introduce further agreed amendments to this legislation based on the outcome of this review. However, a number of amendments are being made at this stage to ensure continuity of data collection immediately after EU Exit.

8. Financial discipline

8.1 The EU crisis reserve is funded annually through the Financial Discipline Mechanism, which entails a mandatory deduction from the direct payments payable to recipients of over €2000 in direct payments. This deduction is then periodically reimbursed the following year, if unspent, to direct payments recipients who are subject to a deduction in that scheme year. Regulation (EU) No 1306/2013 makes provision for this reimbursement in Member States.

8.2 The Agriculture (Legislative Functions) (EU Exit) Regulations 2019 have made changes to prevent the financial discipline mechanism becoming inoperable, each UK administration assessing what amendment is appropriate to remedy that inoperability. The Devolved Administrations have chosen to omit the financial discipline mechanism, whereas England has chosen to use the powers contained in the European Union (Withdrawal) Act 2018 to make financial discipline operable on an England-only basis. The Agriculture (Legislative Functions) (EU Exit) Regulations 2019 do not however include provision for UK relevant authorities to reimburse contributions already made by UK farmers towards the 2018 EU crisis reserve.

8.3 The provision inserted by the Common Agricultural Policy (Market Measures, Notifications and Direct Payments) (Miscellaneous Amendments) (EU Exit) Regulations 2019 will allow these sums to be distributed back to beneficiaries of

Direct Payments following EU Exit, using the same eligibility principles that the EU currently employs.