EXPLANATORY MEMORANDUM TO

THE COMMON ORGANISATION OF THE MARKETS IN AGRICULTURAL PRODUCTS (TRANSITIONAL ARRANGEMENTS ETC.) (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 1403

AND

THE COMMON AGRICULTURAL POLICY AND COMMON ORGANISATION OF THE MARKETS IN AGRICULTURAL PRODUCTS (MISCELLANEOUS ARRANGEMENTS) (EU EXIT) REGULATIONS 2019

2019 No. 1405

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 Act.

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

2. Purpose of the Instruments

2.1 These statutory instruments amend existing domestic secondary legislation, which itself amends retained European Union ("EU") legislation relating to the Common Agriculture Policy ("CAP") to enable it to work effectively after the UK's withdrawal from the EU.

2.2 The amendments make minor corrections to these instruments, including relating to transitional arrangements after EU Exit, to ensure that the instruments are able to function as intended, removing ambiguities and inconsistencies.

2.3 A full list of the domestic legislation being amended by these instruments can be found at section 1 of Annex 2 of this explanatory memorandum.

Explanations

What did any relevant law do before exit day?

2.4 Each of the existing instruments being amended by these instruments amend retained EU CAP legislation so that it is operable after EU Exit. This legislation is part of a larger statutory instrument programme which aims to ensure that the retained EU CAP legislation is fully operable at the point of EU Exit.

2.5 Some of the instruments concern a part of the CAP called the Common Organisation of the Markets ("CMO"), which contains provisions related to market support. The CMO provides a toolkit that enables the EU to:

- Manage market volatility;

- Incentivise collaboration between and competitiveness of agricultural producers; and
- Facilitate trade.

2.6 Other instruments concern the CAP cross-cutting ("Horizontal") framework; this Horizontal legislation creates an agricultural legal framework that enables the following land management support measures to continue to work effectively: Direct Payments to farmers; Rural Development; the CMO.

Why is it being changed?

2.7 Some of the existing legislation requires amendment as it contains details of transitional arrangements which will apply if the UK leaves the EU without a withdrawal agreement. In each instance, these regulations define the end of transitional periods by reference to specific dates, rather than a period of time calculated from EU Exit day. As the UK did not withdraw from the EU on 29 March 2019, these dates need to be updated to ensure that the transitional periods work as intended after EU Exit.

2.8 The legislation being amended contains a small number of minor errors which require correction in order to remove typographical mistakes, inconsistencies and ambiguities, ensuring that it is able to function as intended after EU Exit in a 'no deal' scenario. These corrections will clarify the measures the legislation sets out and ensures consistency with amendments made by other EU Exit instruments, and remove ambiguities where other retained EU CAP regulations and schemes are referenced. These amendments are wholly technical in nature.

What will it now do?

2.9 Where provisions in the legislation being amended refer to a transitional period ending on a specific date, these will be amended to ensure that the transitional arrangement can be realised regardless of the specific date of EU Exit. For example, these instruments will change instances which state '31 December 2020' to 'the end of the period of 21 months beginning on the day on which exit day falls'. The instruments being corrected have already been debated in Parliament and no change is being made to the intended duration of the transitional periods.

2.10 The minor errors detailed in section 2.9 will be corrected in order to clarify the legislation being amended and remove ambiguities and inconsistencies.

2.11 Further detail on the specific changes being made by these instruments is at Annex 2 of this explanatory memorandum.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These instruments amend existing EU Exit instruments to correct minor errors contained in these regulations. These instruments are being published under the free issue procedure. Defra decided not to revoke or remake the existing instruments due to the minor nature of the errors corrected by these instruments.

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 these instruments includes Scotland and Northern Ireland.

3.3 The powers under which these instruments are made cover the entire United Kingdom (see section 24 of the European Union (Withdrawal) Act 2018) and the territorial application of these instruments is not limited either by Act or by the instrument.

4. Extent and Territorial Application

4.1 The territorial extent of the Common Organisation of the Markets in Agricultural Products (Transitional Arrangements etc.) (Amendment) (EU Exit) Regulations 2019 is the UK. Provisions in the Common Agricultural Policy and Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2019 have different extents depending on the extent of the legislation that is the subject of amendment.

4.2 The territorial application of the Common Organisation of the Markets in Agricultural Products (Transitional Arrangements etc.) (Amendment) (EU Exit) Regulations 2019 is the UK. Provisions in the Common Agricultural Policy and Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2019 have different territorial application depending on the extent of the legislation that is the subject of amendment.

5. European Convention on Human Rights

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

"In my view the provisions of the Common Organisation of the Markets in Agricultural Products (Transitional Arrangements etc.) (Amendment) (EU Exit) Regulations 2019 and the Common Agricultural Policy and Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The European Union (Withdrawal) Act 2018 provides for the retention of most EU law as it stands at the moment of EU Exit in domestic law as 'retained EU law'. It also confers temporary powers to make secondary legislation, to enable corrections to be made to retained EU law that would be deficient or would otherwise no longer operate effectively once the UK has left the EU. This power can be used to amend both domestic legislation and retained direct EU legislation. These instruments are being made to correct relevant legislation to ensure it operates effectively after EU Exit.

6.2 These instruments make operability amendments to existing domestic secondary legislation, which itself amends retained EU legislation to enable it to work effectively after the UK's withdrawal from the EU. The amendments made by these instruments will ensure that minor errors are corrected and that the transitional arrangements will function as intended, regardless of the date of EU Exit.

7. Policy background

What is being done and why?

7.1 As outlined in section 2 of this explanatory memorandum, these instruments amend existing domestic regulations, which themselves amend retained EU CAP legislation, to ensure they are fully operable after EU Exit.

7.2 These instruments amend domestic legislation to ensure that where provisions refer to a transitional period, this can be realised as intended, regardless of the date of EU Exit. In each instance, the existing domestic legislation defines the end of transitional periods by reference to specific dates, rather than a period of time calculated from EU Exit day.

7.3 These instruments further make amendments to correct inconsistencies in the drafting and to deal with minor missed inoperabilities and ambiguities; for example, amending typographical errors. These changes ensure consistency with other EU Exit instruments and ensure operability after the UK's withdrawal from the EU.

7.4 A detailed explanation of the amendments being made within these instruments can be found 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 powers 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 United Kingdom 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 There has been consultation through representative bodies, as required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, during the preparation and evaluation of these Regulations so far as they relate to food.

10.2 In addition, Defra has engaged with stakeholder umbrella organisations regarding CAP agriculture policy. Defra has met regularly 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.

10.3 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 worked collaboratively with the devolved administrations to create these instruments and have fully involved the devolved administrations in discussion on the measures in these instruments, in relation to both reserved and devolved matters.

11. Guidance

11.1 Defra is not producing any specific guidance on these instruments, as they only make technical amendments to deficiencies in recently created existing domestic law arising from the UK's withdrawal from the EU.

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. These instruments simply correct deficiencies in domestic law which amends retained EU law to ensure operability after EU Exit.

12.2 There is 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 sector is foreseen. The purpose of the instruments is to maintain existing regulatory standards and so there is expected to be minimal impact on businesses. There should therefore be no significant changes in business practices and no changes in the direct costs faced by businesses as a result of these instruments. As a result Defra is confident that this change in regulation falls below the £5m p.a. 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 European Union (Withdrawal) Act 2018, 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 Robert Goodwill 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 instrument.	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 instrument 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	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.

		alongside all EUWA 2018 instruments.	
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 instrument is urgent.
Explanations where amending regulations under s. 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an instrument 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 instrument 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 Robert Goodwill 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 (Transitional Arrangements etc.) (Amendment) (EU Exit) Regulations 2019 and the Common Agricultural Policy and Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2019 do no more than is appropriate".

1.2 This is the case because: the amendments made by these instruments are the minimum required to ensure that existing domestic legislation remains operable after the United Kingdom ("UK") leaves the European Union ("EU"). The amendments 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 Robert Goodwill 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 amendments to existing domestic legislation are necessary to ensure that the Common Market Organisation ("CMO") and 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 Robert Goodwill MP, has made the following statements:

"The draft 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 Robert Goodwill 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 draft instruments, I, Robert Goodwill 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 in the main body of the explanatory memorandum.

Annex 2

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

1. Further detail on existing domestic secondary legislation amended made by these instruments.

1.1 The Common Organisation of the Markets in Agricultural Products (Transitional Arrangements etc.) (Amendment) (EU Exit) Regulations 2019 relate to the reserved policy areas of regulation of international trade, import and export controls, and regulation of anti-competitive practices and agreements, and amend the below domestic regulation:

- The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019.

1.2 The Common Agricultural Policy and Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2019 amend the below domestic regulations:

- Rural Development (Amendment) (EU Exit) Regulations 2019;
- The Common Agricultural Policy (Financing, Management and Monitoring Supplementary Provisions) (Miscellaneous Amendments) (EU Exit) Regulations 2019;
- The Common Agricultural Policy and Market Measures (Miscellaneous Amendments) (EU Exit) Regulations 2019;
- The Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019;
- Market Measures (Marketing Standards) (Amendment) (EU Exit) Regulations 2019; and
- Market Measures (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2019.

2. Detail on the amendments made by The Common Organisation of the Markets in Agricultural Products (Transitional Arrangements etc.) (Amendment) (EU Exit) Regulations 2019.

2.1 This instrument will amend The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019. This instrument makes corrections to ensure that where provisions refer to a transitional period, this can be realised as intended, regardless of the date of EU Exit. These transitional periods relate primarily to attestations of equivalence and certificates of conformity for imports of hops and fruit and vegetables. During these transitional periods both the new UK forms and certificates and the old EU forms and certificates from third countries attesting that a product meets marketing standards

requirements, shall be accepted, provided that the EU's standards remain at least as high as UK standards. They also concern imports of beef and veal from third countries, where the EU has been given three months to provide the UK with the required list of bodies which maintain the identification and registration system for bovine animals; and a list of operators for whom the body is carrying out checks.

2.2 This instrument also makes some amendments to correct inconsistencies in the drafting and to correct minor inoperablities including, in relation to the recognition of producer organisations and the removal of references to products which are not grown in the UK. This instrument relates to the reserved policy areas of regulation of international trade, import and export controls, and regulation of anti-competitive practices and agreements.

3. Detail on the amendments made by The Common Agricultural Policy and Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2019.

Rural Development (Amendment) (EU Exit) Regulations 2019

3.1 Amendments to these regulations correct drafting inconsistencies in previous EU Exit instruments and ensure operability, for example a number of the amendments remove omissions of articles which have been made operable by the Agriculture (Legislative Functions) (EU Exit) Regulations 2019 (S.I. 2019/748).

The Common Agricultural Policy (Financing, Management and Monitoring Supplementary Provisions) (Miscellaneous Amendments) (EU Exit) Regulations 2019

3.2 This instrument makes a number of minor technical corrections to these regulations in order to remove ambiguity and inconsistencies, and to ensure operability. The corrections are as follows:

i. the omission of references to the Fund for European Aid to the Most Deprived (a scheme never implemented in the UK), to ensure consistency with EU Exit operability amendments already made to regulations concerning the Common Organisation of the Markets in Agricultural Products (as debated by both Houses on 25 March 2019 and 26 March 2019);

ii. a minor amendment to the names of the funding reserves used for Direct Payments (to maintain consistency with nomenclature used for these reserves in other retained EU law);

iii. minor amendments to citations of other regulations (without changing the content referenced) to reflect operability amendments made to those other EU Exit regulations;

iv. restoration of the word "apply", omitted through typographical error by The Common Agricultural Policy (Financing, Management and Monitoring Supplementary Provisions) (Miscellaneous Amendments) (EU Exit) Regulations 2019, and the absence of which makes the affected sentence difficult to read.

The Common Agricultural Policy and Market Measures (Miscellaneous Amendments) (EU Exit) Regulations 2019

3.3 Amendments to these regulations correct a minor referencing error in a previous EU Exit instrument to ensure operability.

The Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019

3.4 Amendments to these regulations make changes to transitional periods, to ensure that they are able to be realised as intended regardless of the date of EU Exit. These transitional periods relate to special provisions for the import of wine; where wine produced in accordance with oenological practices authorised under EU law may be imported into the UK for marketing; and for forms and certificates currently accepted by the EU to continue to be valid in the UK.

3.5 The reasons for these changes are explained at sections 2.7 and 2.9 in the main body of this explanatory memorandum. They further make some minor corrections: correcting references and removing an inconsistency. They also correct a typographical error in Regulation (EU) No 1308/2013

Market Measures (Marketing Standards) (Amendment) (EU Exit) Regulations 2019

3.6 Amendments to these regulations make changes to transitional periods, to ensure that they are able to be realised as intended regardless of the date of EU Exit. These transitional periods relate to labelling of beef and beef products; and labelling of packages of fruit and vegetables, during which labels currently allowed under EU law will continue to be permitted in the UK. The reasons for these changes are explained at sections 2.8 and 2.9 in the main body of this explanatory memorandum. They further correct a typographical error.

Market Measures (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2019

3.7 Amendments to these regulations make changes to transitional periods, to ensure that they are able to be realised as intended regardless of the date of EU Exit. These transitional periods relate to attestations of equivalence for hops during which both the new UK forms and certificates and the old EU forms and certificates from third countries attesting that a product meets marketing standards requirements, shall be accepted, provided that the EU's standards remain at least as high as UK standards. They also relate to labelling of beef and beef products, and labelling of packages of fruit and vegetables, during which labels currently allowed under EU law will continue to be permitted in the UK. The reasons for these changes are explained at sections 2.8 and 2.9 in the main body of this explanatory memorandum.