EXPLANATORY MEMORANDUM TO

THE COMMON ORGANISATION OF THE MARKETS IN AGRICULTURAL PRODUCTS (WINE) (AMENDMENT, ETC.) REGULATIONS 2021

2021 No. 279

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 makes a correction to the legislation governing the wine geographical indications ("GIs") scheme.

What are Geographical Indications?

2.2 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.

2.3 GI designations under the wine scheme are Protected Designation of Origin ("PDO") and Protected Geographical Indication ("PGI"). 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 wine scheme is one of four UK GI schemes. The other schemes are for agricultural products and foodstuffs, spirit drinks and aromatised wines.

2.4 The retained EU legislation also provides the basis to protect certain 'traditional terms' used in the marketing of wine products, for example 'Grand Cru' and 'Reserva'.

Explanations

What did any relevant EU law do before exit day?

2.5 The retained EU legislation amended by this instrument establishes the legal basis for the wine GI scheme and protected traditional terms. It set the rules on the applications for protection, the objection procedure (a form of consultation), who can claim protection and the establishment of a public registers of protected wine GIs and traditional terms. These rules formed part of wider legislation establishing common organisation of the markets in agricultural products and were supported by detailed implementing and delegated regulations. This framework ensures all wine products protected by GI schemes, and associated traditional terms, received legal protection

from imitation or evocation in EU member states. The GI schemes ensured all EU member states were compliant with the GI elements of the World Trade Organization ("WTO") Trade Related Aspects of Intellectual Property Right ("TRIPS") agreement obligations.

Why is it being changed?

2.6 At least ten statutory instruments made operability amendments to retained EU legislation which took effect at the end of the transition period in order to underpin the UK GI schemes (which take the place of the EU schemes in domestic law). One of these SIs inadvertently included a revocation of a previous operability amendment. This instrument reinstates the intended amendment.

What will it now do?

2.7 This instrument reinstates the intended amendment for a single article in Regulation (EU) No 1308/2013, which concerns protected names for wine GIs and traditional terms. See section 7 for details.

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 The retained direct EU legislation amended by this instrument 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 Northern Ireland Protocol. Accordingly, those amendments 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 Common Organisation of the Markets in Agricultural Products (Wine) (Amendment, etc.) Regulations 2021 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:

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

6.3 The domestic secondary legislation being amended is:

i. The Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulation 2020 (S.I. 2020 No. 1452)

7. Policy background

What is being done and why?

7.1 This instrument corrects Article 107 of Regulation (EU) No 1308/2013, concerning protected wine names and traditional terms. Article 107 was amended by regulation 7 of S.I. 2019/828, which was subsequently amended by S.I. 2020/1452. However, regulation 7 of S.I. 2019/828 was omitted in error by S.I. 2020/1446, meaning that the amendments to Article 107 did not come into effect on the last day of the transition period as intended. These regulations make equivalent amendments to Article 107 to those intended to come into force on 31 December 2020. This correction will ensure that all established wine GIs and traditional terms are protected and appear on the public register of wines and traditional terms protected in GB. This in turn ensures that the UK Government fully complies with its GI commitments under the EU Withdrawal Agreement.

Revocations

7.2 The direct amendment to Regulation (EU) No 1308/2013 is supported by a revocation of regulation 6(3) of S.I. 2020/1452. That amendment was rendered ineffective by regulation 7(4) of S.I. 2020/1446 and is being removed for clarity.

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 in paragraph 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 There has been no need for a consultation regarding the content of this SI specifically as it corrects an error in an earlier instrument.

11. Guidance

11.1 Public guidance on UK GI scheme rules is already published on GOV.UK, e.g. how to apply, use the GI logo and rules for existing GI producers. This would not need to be amended in light of this correction.

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). This instrument places no additional burdens on small businesses.

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 Alex McKenna at the Department for Environment, Food and Rural Affairs, Telephone: 07880 475122 or email: Alex.McKenna@defra.gov.uk

15.2 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 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 Common Organisation of the Markets in Agricultural Products (Wine) (Amendment, etc.) Regulations 2021 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 following the UK's exit from the European Union. The amendments do no more than is necessary to ensure that domestic law continues to function effectively. See sections 7.1 to 7.2 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, Article 107 of Regulation (EC) No 1308/2013 of the European Parliament and of the Council, which has been converted into domestic law by the European Union (Withdrawal) Act 2018, will not work properly.

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 Common Organisation of the Markets in Agricultural Products (Wine) (Amendment, etc.) Regulations 2021, 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 enter into force as soon as possible to secure the proper functionality of the wine GI scheme and ensure that relevant GIs are protected under domestic law [in accordance with the EU Withdrawal Agreement].