EXPLANATORY MEMORANDUM TO

THE COMMON ORGANISATION OF THE MARKETS IN AGRICULTURAL PRODUCTS AND COMMON AGRICULTURAL POLICY (MISCELLANEOUS AMENDMENTS, ETC.) (EU EXIT) (NO. 2) REGULATIONS 2019

2019 No. [XXXX]

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.

2. Purpose of the Instrument

2.1 This instrument amends retained European Union ("EU") legislation relating to the common organisation of agricultural markets ("Common Market Organisation" or "CMO"). This instrument will address operability issues created by the United Kingdom ("UK") leaving the EU. This instrument will ensure that the CMO can continue to operate effectively after EU Exit.

2.2 This instrument also makes minor amendments to retained EU law relating to support for rural development and the maritime and fisheries fund. This is to address operability issues created by EU Exit and ensures that the retained EU law can continue to operate effectively in a UK context.

Explanations

What did any relevant EU law do before exit day?

2.3 The CMO is the framework for the market measures provided for under the Common Agriculture Policy ("CAP") since its inception. It provides the framework for the market support schemes set up in the various agricultural sectors and is part of Pillar 1 of the CAP, alongside direct payments. 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), and 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.

2.4 The rural development and maritime and fisheries legislation governs operational programmes through which payments are made. These programmes were prepared either by the UK as a Member State or by the Devolved Administrations and agreed with the European Commission (the "Commission"). They run from 2014 to 2020. There are currently four rural development programmes and one maritime and fisheries programme operating in the UK providing support to the sectors.

Why is it being changed?

2.5 After EU Exit, without amendment, the retained EU legislation will contain inoperable provisions that would prevent the UK government and the Devolved Administrations from being able to deliver the market support schemes to the agricultural and fisheries sector. This instrument will address operability issues created by the UK leaving the EU to ensure that the CMO can continue to operate effectively after EU Exit.

2.6 This instrument therefore uses powers in the European Union (Withdrawal) Act 2018 ("EUWA") to make predominately technical changes to the above legislation to ensure that it remains coherent and functions correctly after the UK has left the EU, and that the schemes and marketing arrangements relating to these policy areas can continue to function smoothly. This will provide clarity to stakeholders.

What will it now do?

2.7 The regimes will continue to function after the UK's withdrawal from the EU in a similar way to how they did previously. This instrument changes the identity of the bodies carrying out the specified functions and converts the EU procedures to UK procedures, as appropriate. A full explanation of the amendments being made within this instrument 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 None.

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 and Northern Ireland.

3.3 Defra has reached this view because the powers under which this instrument is made cover the entire UK (see section 24 of the EUWA) and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument (apart from Part 3) is the UK. Provisions in Part 3 of this instrument have different extents depending on the extent of the legislation that is the subject of amendment.

4.2 The territorial application of this instrument (apart from Part 3) is the UK. Provisions in Part 3 of this instrument have different applications depending on the application 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 and Common Agricultural Policy (Miscellaneous Amendments etc.) (EU Exit) (No. 2) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The European Union (Withdrawal) Act 2018 incorporates EU law as it stands at the moment of EU Exit into domestic law. It also confers temporary powers to make secondary legislation, to enable corrections to be made to retained EU law which otherwise would not operate appropriately after the UK has left the EU. This instrument is being made to correct relevant legislation to ensure it operates effectively after EU Exit. Among other things, it relies upon those correcting powers to allow functions exercisable by 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 corrections made by this instrument relating to CAP (including the CMO) 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 with provision for 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 Additionally, there are certain powers where it has been agreed by the UK administrations that the nature of the provisions requires that functions be exercised uniformly across the whole of the UK. In such cases the function is conferred on the Secretary of State, but the Secretary of State may only act if all four constituent nations agree.

6.5 As part of the process of the UK's withdrawal from the EU, Defra will also introduce other instruments related to this instrument before EU Exit, the main purpose of which will be to correct retained EU regulations relating to the CAP (including the CMO) to ensure they are operable after EU Exit.

7. Policy background

What is being done and why?

7.1 This instrument makes the appropriate corrections to retained EU legislation to ensure that legislation relating to the CAP (including the CMO) can operate effectively after EU Exit. See Annex 2 of this Explanatory Memorandum for details.

7.2 The main CMO policy areas covered by these regulations are:

- Aid schemes: fruit and vegetables and milk in schools, apiculture;
- Marketing standards: olive oil, eggs, poultry meat, wine;
- Import and export licensing;
- Transitional and final provisions.

7.3 The changes to the relevant regulations will ensure the continued operability of the existing regulations largely through replacement of references to the EU or to "Member States". The approach when amending retained EU law has been to keep the effect of that retained legislation as close to the current system as possible.

7.4 This instrument also makes five minor amendments to regulations governing the operational programmes for rural development and maritime and fisheries. Examples of changes include omitting deficient references to "Member States", amends a reference to "Union legislation" and omitting two powers the Commission has to make secondary legislation.

7.5 This instrument also revokes retained EU legislation relating to support for the olive oil and table olives sectors as this legislation will no longer be needed in the UK after EU Exit.

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

8.1 This instrument is 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 efficiently or other deficiencies arising from the withdrawal of the UK from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of Annex 1 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 this specific instrument. 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 these regulations so far as they relate 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. Defra has also engaged with relevant stakeholders on its approach to CMO legislation under the EUWA, including on this instrument, to familiarise them with the legislation ahead of laying.

10.2 In addition, Defra has engaged with stakeholder umbrella organisations regarding CAP agriculture policy. On 25 September 2018, Defra met with the Rural Payments Agency's ("RPA") Industry Partnership Group ("IPG") to update farming and land management stakeholders on the Government's plans for the UK's withdrawal from the EU. At the meeting, stakeholders were 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 This instrument, and the policy reflected in it, has been developed in collaboration with officials in the Scottish and Welsh Devolved Administrations, and DAERA in Northern Ireland.

11. Guidance

11.1 The Government has published technical notices at https://www.gov.uk to help the public prepare in the event of a 'no-deal' for how CAP and food labelling will be handled after EU Exit. These provide relevant background information to the CAP-related content of this instrument. They are:

- 'Producing and labelling food if there's no Brexit deal' (see: https://www.gov.uk/guidance/food-labelling-changes-after-brexit); and
- 'Farm payments if there's no Brexit deal' (see: https://www.gov.uk/government/publications/farm-payments-if-theres-no-brexit-deal).

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 no, or no significant impact on the private or voluntary sector is foreseen. The purpose of this instrument is to maintain existing regulatory standards and so there is expected to be minimal impact on business trading in the UK. The changes made by this instrument are intended to maintain the status quo in terms of the regulatory obligations placed on business. There should therefore be no changes in business practices and no significant changes in the direct costs faced by businesses trading in the UK. 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 affect small and micro businesses.

14. Monitoring & review

14.1 As this instrument is made under the EUWA, no review clause is required. Defra and its agencies will 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.

15. Contact

15.1 Pamela Frost at the Department for Environment, Food and Rural Affairs: 020 802 65991 or email: pamela.frost@defra.gov.uk can be contacted with any queries regarding this instrument.

15.2 Fiona James and Elen Shepard, Deputy Directors for CAP EU Exit Preparedness, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rt Hon Robert Goodwill MP, Minister of State for Agriculture, Fisheries and Food at the Department for Environment, Food and Rural Affairs, 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) Act 2018

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 and Common Agricultural Policy (Miscellaneous Amendments, etc.) (EU Exit) (No. 2) Regulations 2019 does no more than is appropriate."

1.2 This is the case because: the amendments made by this instrument are the minimum required to ensure that existing domestic legislation remains operable after the 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 of 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 this instrument, and I have concluded they are a reasonable course of action".

2.2 These are: that without this instrument, the EU regulations listed at section 1.2 of Annex 2 of this Explanatory Memorandum that are retained in UK law by the European Union (Withdrawal) Act 2018 will not operate effectively after EU Exit. The amendments to existing domestic legislation are necessary to ensure that the Common Market Organisation ("CMO") arrangements can continue to operate seamlessly and without ambiguity after EU Exit. See section 7 of 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 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 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 relation to the draft instrument, 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 of the main body of this 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 EU regulations amended made by this instrument

1.1 The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments, etc.) (EU Exit) (No. 2) Regulations 2019 covers one main policy area: Common Market Organisation ("CMO"). This instrument amends a number of retained 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. It also makes minor amendments to legislation relating to support for rural development.

1.2 The following retained EU regulations are amended by this instrument:

i. Regulation (EU) No. 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products;

ii. Council Regulation (EU) No. 1370/2013 of 16 December 2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products;

iii. Commission Regulation (EC) No. 589/2008 of 23 June 2008 laying down detailed rules for implementing Council Regulation (EC) No. 1234/2007 as regards marketing standards for eggs;

iv. Commission Regulation (EC) No. 617/2008 of 27 June 2008 laying down detailed rules for implementing Regulation (EC) No. 1234/2007 as regards marketing standards for eggs for hatching and farmyard poultry chicks;

v. Commission Regulation (EEC) No. 2568/91 of 11 July 1991 on the characteristics of olive oil and olive-residue oil and on the relevant methods of analysis;

vi. Commission Implementing Regulation (EU) No. 29/2012 of 13 January 2012 on marketing standards for olive oil;

vii. Commission Regulation (EC) No. 543/2008 of 16 June 2008 laying down detailed rules for the application of Council Regulation (EC) No. 1234/2007 as regards the marketing standards for poultrymeat;

viii. Commission Delegated Regulation (EU) 2015/1366 of 11 May 2015 supplementing Regulation (EU) No. 1308/2013 of the European Parliament and of the Council with regard to aid in the apiculture sector;

ix. Commission Implementing Regulation (EU) 2015/1368 of 6 August 2015 laying down rules for the application of Regulation (EU) No. 1308/2013 of the European Parliament and of the Council with regard to aid in the apiculture sector;

x. Commission Implementing Regulation (EU) 2017/39 of 3 November 2016 on rules for the application of Regulation (EU) No. 1308/2013 of the European Parliament and of the Council with regard to Union aid for the supply of fruit and vegetables, bananas and milk in educational establishments;

xi. Commission Delegated Regulation (EU) 2017/40 of 3 November 2016 supplementing Regulation (EU) No. 1308/2013 of the European Parliament and of the Council with regard to Union aid for the supply of fruit and vegetables, bananas and milk in educational establishments and amending Commission Delegated Regulation (EU) No. 907/2014;

xii. Commission Regulation (EC) No. 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No. 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD);

xiii. Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down the common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No. 1083/2006; and

xiv. Regulation (EU) No. 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No. 1698/2005.

1.3 The following existing domestic regulations are amended by this instrument:

i. The Eggs and Chicks (England) Regulations 2009;

ii. The Poultrymeat (England) Regulations 2011; and

iii. The Olive Oil (Marketing Standards) Regulations 2014.

1.4 The following retained EU regulations are repealed by this instrument:

i. Commission Delegated Regulation (EU) No. 611/2014 of 11 March 2014 supplementing Regulation (EU) No. 1308/2013 of the European Parliament and of the Council as regards the support programmes for the olive-oil and table-olives sector; and

ii. Commission Implementing Regulation (EU) No. 615/2014 of 6 June 2014 laying down detailed rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council and Regulation (EU) No. 1308/2013 of the European Parliament and of the Council in respect of work programmes to support the olive oil and table olives sectors.

1.5 Further detail about the amendments made by this instrument to these regulations can be found in section 2 below:

2. CMO framework (detailed in sections 1.2 i and ii above)

2.1 Regulation (EU) No. 1308/2013 provides the basic framework for CMO across the range of aid schemes, producer organisations, licensing and tariffs for imports and exports, marketing standards and market intervention including crisis powers. This instrument makes a small number of amendments to ensure that the retained EU law can continue to operate effectively in a UK context following EU Exit. The remainder of Regulation (EU) No. 1308/2013 has been made operable in other related EU Exit statutory instruments, primarily the Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019, the Agriculture (Legislative Functions) (EU Exit) (No.2) Regulations 2019 and the Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019.

2.2 Within Regulation (EU) No. 1308/2013, this instrument provides powers regarding various rules and regulations, including:

- the operation of the EU School Milk Fruit and Vegetables Scheme (see section 7 below);
- to determine marketing standards (including labelling), exports, procedures and technical criteria in relation to wine;
- to facilitate adjustment of supply to market requirements;
- to determine rules around licencing, such as the products to be subject to presentation of an import/export licence; and
- regarding communications to be made by undertakings, Member States and third countries for purposes including applying the rules on the common organisation of agricultural markets.

2.3 After EU Exit, this instrument provides powers for these rules and regulations on the above provisions detailed on Regulation (EU) No. 1308/2013 to be made by the relevant Ministers or department of the constituent nations, but with provision for the Secretary of State to act on behalf of the Scottish Ministers, Welsh Ministers or DAERA, where the Ministers or Department consent. All amendments made by this instrument relate to powers which fall within the devolved competence.

2.4 Regulation (EU) No. 1370/2013 sets the thresholds and rates for CMO aid schemes (School Milk and School Fruit and Vegetable Schemes), public intervention and private storage aid, sugar sector production charges and refunds and fixing of export refunds. This instrument amends a deficient reference to the "Union scale" for carcase classification so that it now refers to the scale for carcase classification in the UK.

2.5 Article 5(2) provides powers to the Commission to lay down limits for the proportion or amount of aid that may be granted to cover certain categories of costs related to the supply and distribution of eligible products. After EU Exit, this instrument will provide powers for these rules and regulations to be made by the relevant Ministers or department of the constituent nations, but with provision for the Secretary of State to

act on behalf of the Scottish Ministers, Welsh Ministers or DAERA, where the Ministers or Department consent.

2.6 The amendments made by regulations 2 and 3(3) enable the appropriate authorities to make regulations using a negative instrument. The negative procedure was considered appropriate for these powers as the powers are to make rules of a technical and/or procedural nature. These powers include a power to make consequential, incidental, supplementary, transitional or saving provisions in any enactment. While this power could be used to amend primary legislation, the nature of any such amendments is likely to be minor, taking into account the nature of the main power.

2.7 Further amendments to Regulation (EU) No. 1370/2013 have been made by the Agriculture (Legislative Functions) (EU Exit) (No. 2) Regulations 2019.

3. Olive oil: (detailed in section 1.2 v and, vi, 1.3 iii and 1.4 i and ii above)

3.1 The sale of olive oil within the EU is governed by specific olive oil marketing standard regulations which seek to protect the consumer by ensuring that olive oil is marketed accurately and provide a deterrent against fraud. Regulation (EU) No. 1308/2013 sets the basic regulation which sets out all of the market management rules that make up the Common Agriculture Policy (CAP) including marketing standards.

3.2 Currently, this regulation details the descriptions and definitions of olive oils and olive-pomace oils and it is compulsory to comply in order to market those products in the European Union. These EU regulations are directly applicable in each Member State, however, UK uses the Olive Oil (Marketing Standards) Regulations 2014 to give powers to enforce these provisions domestically. Defra has devised an annual sampling regime, which consists of: inspections of olive oil bottling establishments; conformity checks; and checks to ensure that labelling is compliant with EU rules.

3.3 After EU Exit, the sampling regime currently carried out by the RPA will remain unchanged, however the power to specify the number of conformity checks will now be decided by at the UK level, rather than being set by the Commission.

3.4 Essentially, the Olive Oil (Marketing Standards) Regulations 2014 will continue to provide consumer protection by requiring sampling of olive oil for chemical and organoleptic testing to ensure the oil meets the quality standards. This instrument makes minor amendments to the Olive Oil (Marketing Standards) Regulations 2014 to ensure it complies with the amendments that it makes to the retained EU regulations.

3.5 This instrument also revokes Commission Delegated Regulation (EU) No 611/2014 and Implementing Regulation (EU) No 615/2014 as regards the support programmes for the oliveoil and tableolives sectors. These regulations are considered redundant as olives are not grown on a commercial scale in the UK.

4. Eggs and Poultrymeat: (detailed in sections 1.2 iii, iv and vii and 1.3 i, and ii above)

4.1 Commission Regulations (EU) Nos. 543/2008, 589/2008, and 617/2008 lay down detailed rules for marketing standards of poultrymeat, poultrymeat cuts and quality parameters, eggs quality parameters and marking requirements and hatching eggs and chicks marking requirements and registration of breeding stock establishments, respectively.

4.2 The amendments made by this instrument will roll over the existing legal framework into domestic law. As such, the changes made are minor and mechanical, and remove, for instance, the reporting requirements to the EU. The changes will also allow the use of Welsh and other languages, in addition to English. The transition periods included in the instrument for the marking of hatching eggs and chicks are specified to align with other legislation relating to marking of such products originating from third countries. None of the amendments made by the instrument relate to reserved powers.

5. Support for the beekeeping (apiculture) sector (detailed in section 1.2 viii and ix above)

5.1 Commission Implementing Regulation (EU) 2015/1368 and Commission Delegated Regulation (EU) 2015/1366 provide detailed rules on the implementation of the measures to support the beekeeping sector. Commission Implementing Regulation (EU) 2015/1368 sets out the procedure for administration of the programme including approval, amendment and monitoring of the programme. It places certain reporting requirements for the programme, including an annual report on the programme and confirmation of the number of hives which would benefit from the support provided. It requires beekeepers to be consulted when the programme is devised and the elements to be considered when drawing up the programme.

5.2 This regulation previously provided the Commission with the power to approve and make amendments to Member States apiculture programmes. It also required the Commission to publish the agreed programme and reports on the outcomes achieved. The amendments made by this instrument mean that, after EU Exit, this power and responsibility will now be conferred to the Secretary of State in England and the relevant devolved administration in Scotland, Wales and Northern Ireland.

5.3 Delegated Regulation (EU) 2015/1366 lays down requirements for distribution of the Union contribution to apiculture programmes amongst Member States and provides for Member States to take measures to ensure there is no double funding with the Rural Development Programme. The methodology to determine the distribution of the Union contribution was inoperable post EU Exit and has been omitted. Minor operability amendments have been made to ensure after EU Exit powers and responsibilities have been conferred to the Secretary of State in England and the relevant devolved administration in Scotland, Wales and Northern Ireland.

6. The EU School Milk and Fruit and Vegetables Scheme Regulation (EU) No. 1308/2013: (detailed in sections 1.2 i, x, xi)

6.1 The framework for the EU School Milk and Fruit and Vegetables Scheme is set out in Regulation (EU) No. 1308/2013, and supplemented by more detailed rules in tertiary legislation, which is corrected by this instrument. The Scheme makes available aid to Member States to subsidise the costs of providing milk and fruits and vegetables for school children in participating schools. The UK participates in the milk elements, but not the fruit and vegetables elements of this scheme.

6.2 The amendments made by this instrument correct deficiencies in Commission Delegated Regulation (EU) 2017/40 and Commission Implementing Regulation (EU) 2017/39, tertiary regulations made under Regulation (EU) No. 1308/2013 which make

detailed provisions for the operation of the EU Scheme. These amendments will support future decisions in this area.

6.3 These regulations set out further detail on a number of measures, including: eligibility of applicants for aid; requirements for aid applications and payments; suspension and withdrawal of approval of applicants; penalties for non-compliance; information to be contained in Member States school scheme strategies; publicity measures at schools; Member States requests for aid; and monitoring and evaluation requirements.

6.4 The amendments maintain, as appropriate, requirements for: monitoring and evaluation; content of the scheme strategy; processes for aid application and payments; provisions on monitoring; evaluation and publicity. They replace references to the EU with domestic institutions as appropriate. Existing EU provisions such as requests for EU state aid by Member States and notifications to the Commission are not retained as these will no longer be required after EU Exit.

6.5 The retained provisions on the school scheme set out in Regulation (EU) No. 1308/2013 are amended in two linked EU Exit SIs: the Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019; and the Agriculture (Legislative Functions) (EU Exit) (No.2) Regulations 2019.

7. Support for rural development and the maritime and fisheries fund (as detailed in sections 1.2 xii, xiii and xiv):

7.1 Regulation (EU) No. 1303/2013 lays down the common rules, principles and standards applicable to the operational programmes for rural development and maritime and fisheries. This instrument makes three amendments to Regulation No. 1303/2013 to ensure that the retained EU law can continue to operate effectively in a UK context following EU Exit. This instrument omits a deficient reference to "Member States" and omits two powers the Commission has to make secondary legislation.

7.2 The remainder of Regulation (EU) No. 1303/2013 has been made operable in other related EU Exit statutory instruments, primarily the European Structural and Investment Funds Common Provisions (Amendment) (EU Exit) Regulations 2019.

7.3 Regulation (EU) No. 1974/2006 set out rules on support for rural development programmes. It has been repealed but continues to apply to ongoing projects that were commenced under rural development programmes applying during 2007 to 2013. This instrument amends one reference to "Union legislation" so that it now refers to the law as it applies in the constituent nation of the UK.

7.4 Regulation (EU) No. 1305/2013 sets out rules on support for the current rural development programmes. This instrument omits a deficient reference to "Member States".

7.5 The remainder of Commission Regulation (EC) No. 1974/2006 and Regulation (EU) No. 1305/2013 has been made operable by other related EU Exit statutory instruments, primarily the Rural Development (Amendment) (EU Exit) Regulations 2019.