EXPLANATORY MEMORANDUM TO

THE COMMON ORGANISATION OF THE MARKETS IN AGRICULTURAL PRODUCTS AND COMMON AGRICULTURAL POLICY (MISCELLANEOUS AMENDMENTS) (EU EXIT) 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 Act.

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") with a common objective of, directly or indirectly, supporting prices received by agricultural producers. This instrument will address operability issues created by the United Kingdom ("UK") leaving the EU relating to reserved policy areas in the CMO to ensure that the CMO can continue to operate effectively after EU Exit.

2.2 The instrument will also address operability issues created by the UK leaving the EU in relation to the reserved policy area of checks relating to protected designations of origin and geographical indications in the EU Common Agricultural Policy ("CAP") cross-cutting ("Horizontal") legislation.

Explanations

What did any relevant EU law do before exit day?

2.3 The relevant EU law regulates anti-competitive practices, international trade, import and control controls, and intellectual property law in six CAP CMO and Horizontal Regulations detailed in section 1 of Annex 2 of this explanatory memorandum. Further amendments are made to the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, in relation to appeals on decisions on protected designations of origin and geographical indications. These include some legislative functions necessary for managing schemes relating to these policy areas.

Why is it being changed?

2.4 After EU Exit, without amendments, certain provisions relating to the reserved policy areas of the regulation of anti-competitive practices, regulation of international trade, import and export controls, and intellectual property law within the retained EU CMO and Horizontal legislation described in section 2.3 above and s. 1 of Annex 2 will be inoperable. This instrument uses powers in the European Union (Withdrawal) Act 2018 to make changes to this legislation to ensure that it remains coherent and functions correctly after the UK has left the EU, and that the schemes relating to these policy areas can continue to function smoothly.

What will it now do?

2.5 This instrument will ensure that the retained EU CAP CMO and Horizontal legislation will operate effectively after EU Exit, maintaining a status quo position as far as possible, and transferring related legislative functions held by the Commission onto the Secretary of State post-Exit.

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 This instrument has effect in the whole of the United Kingdom and, as such, the English Votes for English Laws procedure is not applicable to this instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the UK.

4.2 The territorial application of this instrument is the UK.

5. European Convention on Human Rights

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

"In my view the provisions of the Common Organisation in Agricultural Markets and Common Agricultural Policy (Miscellaneous Amendments) (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 exit into domestic law. It also confers temporary powers to make secondary legislation, to enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has left the EU. This includes both domestic law and directly applicable EU law. This instrument is being made to correct relevant legislation to ensure it operates effectively after EU Exit.

6.2 This instrument contains operability amendments relating to rules for UK Geographical Indications ("GIs") (protected designations of origin, geographical indications) and traditional terms for wine. They supplement detailed rules on wine sector GIs and traditional terms provided in the Food and Farming (Miscellaneous Amendments) (EU Exit) Regulations 2019 and general rules on GIs provided in the Food and Drink, Veterinary Medicines and Residues (Amendment etc.) (EU Exit) Regulations 2019.

7. Policy background

What is being done and why?

7.1 This instrument ensures that certain provisions relating to the reserved policy areas of regulation of anti-competitive practices, regulation of international trade, import and export controls, and intellectual property law will continue to operate effectively as domestic law after EU Exit. It also confers legislative functions held by the Commission in these reserved policy areas onto the Secretary of State to enable the smooth functioning of related schemes for producers, traders, importers, and exporters of agricultural goods.

7.2 In particular, this instrument will contain amendments to:

- recognise producer organisations, which provide exemptions from certain aspects of competition law, across all agricultural sectors;
- make operable requirements for written contracts in the dairy sector;
- recognise and set out the rules for appeals in the domestic courts relating to protection of a name as a designation of origin or geographical indication for wine;
- confer powers on the Secretary of State to make regulations in relation to checks relating to protected designations of origin and geographical indications for wine;
- facilitate and regulate the import of beef and veal, wine, hops, fruits and vegetables, and ovalbumin and lactalbumin;
- facilitate and regulate the import and export of fruits and vegetables; and
- make operable rules relating to the granting of export refunds for processed agricultural goods.

7.3 Further detail on these amendments are included in Annex 2, section 2.

This instrument makes amendments to Regulations (EU) 1308/2013, 510/2014, 566/2008, 543/2011 and 1295/2008, but only deals with certain reserved elements of those EU Regulations, as set out in more detail at paragraph 7.2 and Annex 2. Other amendments to these EU Regulations are contained in the following statutory instruments:

- The Common Organisation of the Markets in Agriculture Framework (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019
- The Market Measures (Marketing Standards) (Amendment) (EU Exit) Regulations 2019
- The Agriculture (Legislative Functions) (No. 2) Regulations 2019

7.4 In addition, further amendments to correct deficiencies, in particular to Regulations (EU) 1308/2013, 510/2014 and 543/2011, will also be made in regulations which we anticipate being laid in the next few weeks.

7.5 Regulation (EU) 1306/2013 is amended primarily by the Common Agricultural Policy (Financing, Monitoring and Management) (Amendment) (EU Exit) Regulations 2019 and the Agriculture (Legislative Functions) (EU Exit) Regulations 2019.

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

8.1 This instrument is 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 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.

8.2 The amendments made by regulations 48 and 56 enable the Secretary of State to use a negative instrument to amend retained direct EU legislation. Both powers include a power to make consequential, incidental, supplementary, transitional or saving provisions in any enactment.

8.3 Regulation 48 inserts a provision governing the exercise of a power to add a third country to the list in Annex IV to Regulation (EU) No 543/2011 of countries which are permitted to conduct conformity checks (this does not exempt produce from these countries from UK conformity checks, but merely has the potential to reduce their frequency).

8.4 Regulation 56 inserts a provision governing the exercise of a power to revise Annex I to Regulation (EU) No 1295/2008 in light of information supplied by third country authorities (to update the names and contact details of third country agencies listed in that Annex) and a power to remove an agency from that list if the hops attested by that agency are found not to comply with the terms of the attestation and UK quality standards.

8.5 The negative procedure was considered appropriate for these powers due to the limited nature of the amendments that can be made under these provisions. While the power to make consequential, incidental, supplementary, transitional or saving provisions could be used to amend primary legislation, the nature of any such amendments is likely to be minor, taking into account the scope of the main power.

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 There has been consultation through representative bodies, as required by Article 9 of Regulation (EC) No 178/2002 laying down the general principles and requirements of food law, during the preparation and evaluation of these Regulations so far as they relate to the import of hops. No changes were made to the proposed approach on the basis of this consultation.

10.2 In addition, Defra has engaged with relevant stakeholders and the devolved administrations on its approach to CMO legislation under the EUWA 2018, including on this instrument, to familiarise them with the legislation ahead of laying.

11. Guidance

11.1 There is no associated guidance.

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. As explained above, these changes in regulation are intended to maintain the status quo in terms of businesses' regulatory obligations. There should be no significant changes in business practices and no significant changes in the direct costs faced by businesses. As a result, we are confident that the changes introduced by this instrument fall below the £5m per annum threshold for net direct costs to businesses.

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 The approach to monitoring of this legislation is that Defra and its agencies will monitor and review the impact of these 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 the Department for Environment, Food and Rural Affairs, telephone: 0208 02 65991, or e-mail: pamela.frost@defra.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Fiona James and Elen Shepard, Deputy Director for the Common Agricultural Policy, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP 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) 2018 Act

1. Appropriateness statement

1.1 The Minister of State for Agriculture, Fisheries and Food, 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 and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019 do no more than is appropriate".

1.2 This is the case because: the amendments made by the instrument are the minimum required to ensure that existing domestic legislation remains operable after UK leaves the European Union. 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 s. 7.1-2 and s. 1.1 of Annex 2).

2. Good reasons

2.1 The Minister of State for Agriculture, Fisheries and Food, 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 this instrument, and I have concluded they are a reasonable course of action".

2.2 These are: the amendments to existing domestic legislation necessary to ensure that the Common Agricultural Policy ("CAP"), together with the provision of funding support to farmers and land managers under its schemes, can continue to operate seamlessly and without ambiguity after EU Exit (see s. 7.1-2 and s. 1.1 of Annex 2).

3. Equalities

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

"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, George Eustice 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, 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.

Annex 2

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

1. Regulations amended by the Common Organisation of the Markets in Agricultural Products and the Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019

1.1 The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019 amends in several places in the following regulations:

i. Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products (of which some remaining provisions are amended by 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, some provisions are expected to be amended by future statutory instruments to be made under the powers granted by the EU (Withdrawal) Act 2019 amending retained direct EU legislation, and some relating to import tariff policy are not being retained due to the Taxation (Cross-border Trade) Act 2018); and

ii. Regulation (EU) No 510/2014 of the European Parliament and of the Council laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products (of which some remaining provisions are expected to be amended by future statutory instruments to be made under the powers granted by the EU (Withdrawal) Act 2019 amending retained direct EU legislation, and some relating to import tariff policy are not being retained due to the Taxation (Cross-border Trade) Act 2018).

1.2 This instrument also amends these specific articles in the following regulations:

i. Article 7(3) to (5) of Commission Regulation (EC) No 566/2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing of the meat of bovine animals aged 12 months or less (the remaining provisions of which are amended by the Market Measures (Marketing Standards) (Amendment) (EU Exit) Regulations 2019);

ii. Articles 14, 15, 16, and 18 of Commission 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 (Title I, the remaining provisions of Title II, Title V of and the Annexes to which are amended by the Market Measures (Marketing Standards) (Amendment) (EU Exit) Regulations 2019, and Title III of which (relating to producer organisations) is expected to be amended by a future statutory instrument;

iii. Articles 3, 4, and 6 of Commission Regulation (EC) No 1295/2008 on the importation of hops from third countries (the remaining provisions of which are amended by the Market Measures (Marketing Standards) (Amendment) (EU Exit) Regulations 2019; and

iv. Article 90(4) of Regulation (EU) No 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy (the remaining provisions of which are amended by the Common Agricultural Policy (Financing, Management and Monitoring) (Miscellaneous Amendments) (EU Exit) Regulations 2019 and the Agriculture (Legislative Functions) (EU Exit) Regulations 2019.

1.3 Finally, this instrument makes a consequential amendment to The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

2. Further details on the amendments to the above retained EU CAP CMO and Horizontal regulations made by this instrument.

Recognition of producer organisations

2.1 Regulation (EU) No 1308/2013 of the European Parliament and of the Council provides powers for Member States to recognise groups of farmers as producer organisations in the agricultural sectors set out in the Regulation. These provisions seek to regulate anti-competitive practices, by regulating concerted activities which producers can engage in as members of recognised organisations. This instrument confers Commission functions relating to the recognition of producer organisations onto the Secretary of State to exercise on behalf of the UK, and makes technical amendments to remove EU references.

Setting the requirements for written contracts in the dairy sector

2.2 Regulation (EU) No 1308/2013 of the European Parliament and of the Council provides powers for Member States to require mandatory written contracts in the dairy sector, and to collect information necessary for monitoring and assessing the effectiveness of these. These provisions relate to regulating anti-competitive practices and the abuse of dominant position. This instrument makes amendments to ensure that, if written contracts were to be introduced, the requirements in relation to such written contracts will still apply.

Recognition of and appeal rights relating to protection of a name as a designation of origin or geographical indication for wine

2.3 Regulation (EU) No 1308/2013 of the European Parliament and of the Council lays down rules relating to the application for and objection to protection of a name as a designation of origin or geographical indication, a form of intellectual property, for wine. These processes are currently run by the European Commission and so become inoperable as a result of EU Exit. The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019 confers the function of approval upon the Secretary of State and creates an appeals process in the domestic courts via the First-tier Tribunal.

International trade in agricultural goods

2.4 Article 90(3) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council sets out special provisions for the import of wines. It requires that wine

imports to the EU are covered by specific wine certification requirements that provide key information on the content of the shipment. These requirements are being retained for imports to the UK post EU Exit, and transitional measures have been introduced to avoid potential disruption resulting from wines arriving from the EU without the correct accompanying documentation.

2.5 Article 7, paras (3) – (5) of Regulation (EC) No 566/2008, laying down detailed rules as regards the marketing of the meat of bovine animals aged 12 months or less, provides for the Commission to recognise bodies in third countries as being able to control an identification and registration system of bovine animals, as well as powers to request information from/permission to inspect these bodies, and the ability to set down specific import rules for beef and veal in cases of noncompliance with traceability rules. These powers are currently vested in the Commission, and so will become inoperable when we leave the EU. This instrument confers these powers on the Secretary of State to exercise on behalf of the UK.

2.6 Regulation (EU) No 543/2011, laying down detailed rules in respect of the fruit and vegetables and processed fruit and vegetables sectors, includes provisions relating to the certificates of conformity with EU marketing standards that are required for imports and exports of fruits and vegetables to clear customs, as well as powers to authorise third countries to conduct checks and issue certificates. These powers are currently vested in the Commission, and so will become inoperable when we leave the EU. This instrument confers these powers on the Secretary of State to exercise on behalf of the UK.

2.7 Regulation (EC) No 1295/2008, on the importation of hops from third countries, sets the conditions that imported hops must meet in order to be allowed into the EU. These conditions are being retained for imports to the UK post-exit, and transitional measures have been introduced to avoid potential disruption resulting from hops arriving from the EU without the correct accompanying documentation. Regulation (EC) No 1295/2008 also contains powers to authorise third countries to export hops to the EU. These powers are currently vested in the Commission, and so will become inoperable when we leave the EU. This instrument confers these powers on the Secretary of State to exercise on behalf of the UK.

2.8 Article 90(4) of Regulation (EU) No 1306/2013 of the European Parliament and of the Council lays down rules to prevent the unlawful use of protected designations of origin, protected geographical indications and protected traditional terms for wines. It also empowers the Commission to provide additional requirements to ensure checks are carried out correctly and efficiently and that eligibility conditions are verified in an efficient, coherent and non-discriminatory manner. This instrument confers these powers on the Secretary of State to exercise on behalf of the UK.

International trade in processed agricultural goods

2.9 Regulation (EU) No 510/2014 of the European Parliament and of the Council lays down the trade arrangements applicable to certain goods resulting from the processing of agricultural products, including the issuing of import licenses for the control and monitoring of imports of ovalbumin and lactalbumin into the EU, and for the issuing of refund certificates to provide for export refunds for basic agricultural products exported in the form of processed products in the event of a major market disturbance. This instrument makes amendments replacing references to Member States, the Union

and the TFEU so that these provisions will be operable in a domestic context and removes redundant provisions relating to provision of information of the Commission.