EXPLANATORY MEMORANDUM TO

THE COMMON ORGANISATION OF THE MARKETS IN AGRICULTURAL PRODUCTS (PRODUCER ORGANISATIONS AND WINE) (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2020

2020 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.

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

2. Purpose of the instrument

2.1 This instrument covers one main policy area: Common Organisation of Agricultural Markets ("CMO"), the framework for market measures and responding to a market crisis in the agricultural sector, provided for under the Common Agricultural Policy ("CAP"). The European Union (Withdrawal) Act 2018 ("the EUWA") converts and preserves EU law relating to the CMO at the end of the transition period into domestic law ("retained EU law"). This instrument makes the appropriate corrections to retained EU law to ensure that CMO rules will operate effectively at the end of the transition period. These amendments include corrections to a previous EU Exit SI. The approach when amending retained EU law has been to ensure that legislation remains as close to the current system as possible; changes are largely technical in nature.

2.2 This instrument makes a number of changes:

- Firstly, it revokes CMO rules relating to transnational producer groups, which will no longer be relevant in the UK at the end of the transition period;
- Secondly, it ensures that CMO rules relating to domestic producer organisations continue to function, preventing ambiguity or disruption for stakeholders in this sector; and
- Thirdly, it makes provision for wines to ensure arrangements for the protection and cancelation of Protected Designations of Origin ("PDOs") and Protected Geographical Indications ("PGIs") continue to function at the end of the transition period.

2.3 The EU Exit SIs and EU regulations amended by this instrument are:

- Commission Delegated Regulation (EU) No 880/2012 supplementing Council Regulation (EC) No 1234/2007 as regards transnational cooperation and contractual negotiations of producer organisations in the milk and milk products sector;
- Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products;

- Commission Delegated Regulation (EU) No 2016/232 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to certain aspects of producer cooperation;
- Commission Delegated Regulation (EU) 2017/891 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the fruit and vegetables and processed fruit and vegetables sectors and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to penalties to be applied in those sectors;
- Commission Implementing Regulation (EU) 2017/892 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the fruit and vegetables and processed fruit and vegetables sectors; and
- The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019.

2.4 This instrument also revokes all implementing acts adopted under Articles 97(3) and (4), 99, 106 and 115(2) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council that would otherwise form part of UK law by virtue of section 3(1) of the European Union (Withdrawal) Act 2018.

2.5 This instrument amends retained EU legislation and a UK statutory instrument relating to the CMO in areas which Defra considers are of reserved competence. It should be read in conjunction with The Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 which relates to the CMO, specifically producer organisations in the fruit and vegetable sector, in areas of devolved competence. See section 6.4.

Explanations

What did any relevant EU law do before the end of the transition period?

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

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

2.7 The specific CMO measures amended by this instrument set out rules for producer organisations in the fruit and vegetable, and milk and milk products sectors; and wine imports and quality policy. They also conferred various legislative functions on the European Commission ("the Commission") so that it could develop the technical details required to operate a specific regime. Examples of these functions include: setting eligibility criteria, establishing recognition criteria for producer organisations,

establishing key dates for submission of claims for aid, setting out rules for contractual negotiations in the milk sector, and laying down details of checks to be carried out to enable producer cooperation.

Why is it being changed?

2.8 At the end of the transition period, without amendment, the retained EU legislation referenced above would contain European terms and requirements that might prevent the UK government and the Devolved Administrations from being able to deliver the market support schemes to the agricultural sector. Without these amendments the UK would not be able to administer the Fruit and Vegetable Aid Scheme correctly, including carrying out checks on Producer Organisations recognised in the Aid Scheme and paying aid to those producers. This instrument uses powers in the EUWA to correct these deficiencies and to enable functions to be exercised by UK public authorities.

What will it now do?

2.9 The regimes will continue to function at the end of the transition period in a similar manner to how they did previously. This instrument will also change the identity of the bodies carrying out the specified functions and converts the EU procedures to UK procedures, as appropriate.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument includes provisions previously laid before the JCSI and Parliament as an urgent "made affirmative" instrument, the Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/1343). That instrument was made by the then-Minister of State for Agriculture, Fisheries and Food, the Rt Hon George Eustice MP, on 14 October 2019, and laid on the same day. However, that instrument required approval by resolution of each House of Parliament within twenty-eight days beginning with the day on which the Regulations were made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days. The instrument was debated and approved by a House of Commons delegated legislation committee, but was not debated by the House of Lords within the requisite 28 day period, and in consequence those provisions needed to be re-made.

3.2 This instrument amends an earlier EU Exit SI – the Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019 (SI 2019/828) – to correct minor errors. Defra decided not to revoke or remake this EU Exit SI due to the minor nature of the errors corrected by this instrument.

3.3 Defra has issued this instrument free of charge to all known recipients of SI 2019/828 as, given the nature of the correcting provisions in this instrument and the proportion that they represent of the whole instrument, it is proportionate to apply the free issue procedure to SI 2019/828.

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

3.5 This SI is subject to the 'draft affirmative' procedure.

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)

3.6 This instrument has effect in the whole of the UK 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 Parliamentary Under Secretary of State for Farming, Fisheries and Food, Victoria Prentis MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 The EUWA incorporates EU law as it stands at the end of the transition period into UK law. Section 8(1) of the EUWA provides that a Minister of the Crown may, by regulations, make such provision as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law arising from the withdrawal of the UK from the EU. This includes both UK law and directly applicable EU law. This instrument is accordingly being made to correct relevant legislation to ensure it operates effectively at the end of the transition period. 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 UK law that will otherwise not operate effectively at the end of the transition period.

6.2 This instrument amends CMO provisions which Defra considers to be reserved.

6.3 As part of the process of the UK's withdrawal from the EU, Defra has introduced a series of EU Exit SIs over 2019 and 2020 to ensure retained EU law will continue to function correctly at the end of the transition period. This instrument is therefore a part of that wider legislative programme.

6.4 Some of the retained EU law detailed in section 7 of this Explanatory Memorandum is also amended by the Agriculture (Payments) (Miscellaneous Amendments) (EU Exit) Regulations 2020. The reason for this is that Commission Delegated Regulation (EU) 2017/891 and Commission Implementing Regulation (EU) 2017/892 contain provisions that Defra considers to fall within reserved competence and provisions that are agreed by Defra and the Devolved Administrations to fall within devolved competence. This instrument amends provisions within reserved competence and The Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 amends those provisions within devolved competence.

7. Policy background

What is being done and why?

7.1 This instrument amends provisions relating to the CMO, the framework for market measures and responding to a market crisis in the agricultural sector, provided for under the EU CAP. The CMO has developed over time to enable the EU to manage market volatility, encourage cooperation between and competitiveness of agricultural producers and to facilitate trade. The amendments made by this instrument will ensure that CMO rules continue to operate effectively at the end of the transition period.

7.2 This instrument amends CMO rules to omit provisions for transnational producer organisations from retained EU law. Transnational producer organisations consist of farmers based in multiple Member States of the EU, grouped together into a single producer organisation. The UK cannot legislate to require the EU to include UK producer organisations in its transnational producer organisations, and so these provisions need to be omitted. UK-based producer organisations will however retain the powers to collaborate to negotiate contracts.

7.3 This instrument also amends retained EU law to ensure that new operational programmes under the Fruit and Vegetable Producer Organisation Aid Scheme can operate at the end of the transition period. This includes amendments to rules for the recognition of producer organisations in the fruit and vegetables sector and the operation of the Fruit and Vegetable Producer Organisation Aid Scheme. These amendments will ensure groups of growers are still able to come together to form producer organisations with the aim of planning production, concentrating supply and making the growers stronger in the marketplace. The amendments will also ensure continued recognition of producer organisations and the terms and conditions of the Aid Scheme (including, among other things, the activities that can be funded under the scheme, the amount of funding that can be claimed, and the requirements that producer organisations must meet, and will ensure current obligations setting out what Member States must do to ensure that aid is paid correctly remain unambiguous. Without these provisions, the UK Government and devolved administrations might be restricted in being able to operate and/or make any necessary technical changes to each policy regime.

7.4 The amendments at 7.3 above are to be read in conjunction with the amendments made to Commission Delegated Regulation (EU) 2017/891 and Commission Implementing Regulation (EU) 2017/892 by The Agriculture (Payments) (Amendment etc) (EU Exit) Regulations 2020. To implement Article 138 of the Withdrawal Agreement, which provides that EU law will continue to apply to some ongoing CMO schemes (until their end) after the end of the transition period, these amendments will only apply in respect of new operational programmes approved after the end of the transition period, and to other programmes once the application of Article 138 of the Withdrawal Agreement ends. Clause 18 of the Agriculture Bill makes provision to ensure that notwithstanding the effect of Article 138, all legislation relating to these measures becomes retained EU law on IP completion day. These Regulations will not be made until after the Agriculture Bill receives Royal Assent.

7.5 This instrument will also ensure arrangements for the protection and cancelation of PDOs and PGIs in relation to wine continue at the end of the transition period. A legal framework for the protection and cancelation of PDOs and PGIs for wine is set out

elsewhere in retained EU law, in Regulation (EU) No 1308/2013. The amendments made by this instrument will give the Secretary of State the power to approve a PDO, a PGI or a traditional term, or if necessary to cancel the protection of such appellations where compliance with required specifications is no longer guaranteed. It will also give the Secretary of State powers to protect UK PDOs and PGIs that have been registered by the Commission or GIs or traditional terms that the UK has agreed to protect as part of an international trade agreement. These provisions are fundamental to the UK having a viable GI scheme for wine, which is necessary to ensure that the UK meets its World Trade Organisation obligations and is able to ratify certain wine trade agreements that have already been signed, such as those with Australia or the USA. The amendments made by this instrument will enable the Secretary of State to exercise certain of these powers administratively rather than legislatively after EU Exit.

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(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the EU. In accordance with the requirements of that Act, the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 Defra does not intend to consolidate the relevant legislation at this time.

10. Consultation outcome

10.1 No formal public consultation was carried out about 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 this instrument so far as it relates to food. This lays down the general principles and requirements of food law. No changes were made to the proposed approach on the basis of this engagement.

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

10.3 In addition, Defra has engaged with stakeholder umbrella organisations regarding CAP agriculture policy. Defra has met approximately monthly with the Rural Payments Agency's Industry Partnership Group 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 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.

10.4 Defra has engaged the Devolved Administrations on its approach to CAP legislation under the European Union (Withdrawal) Act 2018, including on this instrument, to familiarise them with the legislation ahead of laying. Defra has engaged with the Devolved Administrations during the drafting of this instrument.

11. Guidance

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

12. Impact

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

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

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

13. Regulating small business

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

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

14. Monitoring & review

14.1 As this instrument is made under the powers in the EUWA, no review clause is required. Defra and its agencies will, however, monitor and review the impact of the 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 Defra: 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 Defra can confirm that this Explanatory Memorandum meets the required standard.

15.3 Victoria Prentis MP, the Parliamentary Under Secretary of State for Farming, Fisheries and Food at Defra, 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 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 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 The Parliamentary Under Secretary of State for Farming, Fisheries and Food, Victoria Prentis MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020 does no more than is appropriate".

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

2. Good reasons

2.1 The Parliamentary Under Secretary of State for Farming, Fisheries and Food, Victoria Prentis 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 2.2 These are the changes to retained EU legislation and to existing UK legislation are necessary to ensure that the Common Agricultural Policy arrangements can continue to operate seamlessly and without ambiguity after the end of the transition period. See section 7 in the main body of this Explanatory Memorandum.

3. Equalities

3.1 The Parliamentary Under Secretary of State for Farming, Fisheries and Food, Victoria Prentis MP, has made the following statement(s):

"The 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 Parliamentary Under Secretary of State for Farming, Fisheries and Food, Victoria Prentis MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Victoria Prentis MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

5. Legislative sub-delegation

5.1 The Parliamentary Under Secretary of State for Farming, Fisheries and Food, Victoria Prentis MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view it is appropriate to create a relevant sub-delegated power in the Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020."

5.2 This is appropriate because: the provisions to which this applies are provisions which the Commission currently exercises through implementing or delegated acts, but which it is more appropriate, in the domestic context, to exercise administratively. These are provisions relating to designations of origin, geographical indications and traditional terms in respect of wine