EXPLANATORY MEMORANDUM TO

THE FOOD AND DRINK (MISCELLANEOUS AMENDMENTS RELATING TO FOOD AND WINE COMPOSITION, INFORMATION AND LABELLING) REGULATIONS 2021

2021 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 memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The amendments in this instrument apply after the end of the Transition Period following the UK's exit from the EU and address deficiencies arising from the UK's departure from the EU.

2.2 This instrument amends relevant retained direct EU legislation, concerning food information to consumers, to address deficiencies in retained EU law arising from the UK's departure from the EU. It also ensures the operability of certain domestic pieces of food legislation in England on Caseins and Honey after the end of the Transition Period.

2.3 There are no changes to policy, however, there are substitutions which arise as a result of the UK no longer being in the EU and which will have minor 'real world' effects on food information and the way in which it is presented to consumers. This instrument also provides for transition to these changes and provides for enforcement arrangements that concern how geographical indication (GI) designations on labelling of products can be used following the UK's departure from the EU. These are explained in detail in section 7 of this memorandum.

2.4 The instrument also amends relevant retained EU legislation concerning wine labelling, wine production practices, processes and methods of analysis to ensure these can continue to operate after the end of the Transition Period.

2.5 There are no changes to policy. However, transitional provisions have been included that will allow for wine marketed in GB to continue to show an importer or bottler based in the EU to be shown on the label. This sets a parallel with transitional provisions granted in respect of the provision of food business operator (FBO) details on the label of prepacked foods.

Explanations

What did any relevant EU law do before exit day?

2.6 **Food information to consumers labelling:** The Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, its related Implementing Regulations and delegated acts, set out clearly the food information that is mandatory as well as how mandatory and voluntary

information is presented to consumers. Regulation (EU) No 1169/2011 of the European Parliament and of the Council includes the requirement for a food label to include an address that is in the EU for the business responsible for the information on the label. Commission Implementing Regulation (EU) No 1337/2013 sets out how the country of origin of non-beef meat should be given when the name of a single country is not used.

2.7 **Caseins:** The Caseins and Caseinates (England) Regulations 2017 transpose EU Council Directive 2015/2203 relating to caseins and caseinates for human consumption. Caseins must be labelled with an address that is in the EU for the responsible business when making business-to-business exchange of goods e.g. when in large, non-retail containers.

2.8 **Honey:** The Honey (England) Regulations 2015 transpose EU Council Directive 2001/110/EC relating to honey. It requires all honey labelling to include a country of origin but allows for honey blends made from honeys from different countries to alternatively use the terms 'blend of EU honeys', 'blend of non-EU honeys' or 'blend of EU and non-EU honeys', whichever is appropriate.

2.9 **Meat and minced meat and trimmings (excluding beef):** Commission implementing Regulation (EU) No 1337/2013 allows meat (excluding beef) imported into and then slaughtered in the EU to be labelled as "reared in non-EU", and minced meat (excluding beef) to be labelled using the origin indicators "EU" and/or "non-EU".

2.10 **Wine:** Commission Delegated Regulation (EU) No 2019/934 and Commission Implementing Regulation (EU) No 2019/935 set out authorised oenological practices, restrictions and analysis methods applicable to wine production. Commission Delegated Regulation (EU) No 2019/33 sets out rules on the labelling and marketing of wine products. It also sets out detailed rules applicable to the protected designations of origin, protected geographical indications and traditional terms schemes for wine sector products.

Why is it being changed?

2.11 Retained EU law is being amended in order to ensure operability of the legislation after the end of the Transition Period. Consequential amendments are also being made to relevant domestic law.

2.12 The UK is substituting some EU-centric terms for UK ones in the options available for labelling the origin of non-beef meat and minced meat and trimmings, and of blended honey, and concerning the address of the business responsible for the information on the label of a prepacked food. EU-centric rules will not be appropriate for the UK.

2.13 Changes to domestic food information to consumer law will provide for a 21 month period of adjustment for food placed on the market in England for businesses to comply with new food business operator address and country of origin indication rules. Similar provisions are planned by Wales and Scotland, so allowing for a cross-GB period of adjustment.

2.14 In introducing operability changes to wine law some aspects of that law have either become obsolete or will need to be adapted to reflect new responsibilities for Ministers, authorities or trade agreements that the UK has signed. It will also address a requirement that wine marketed in GB after the Transition Period must show an importer or bottler located in GB on the label.

What will it now do?

2.15 Prepacked food will require the label to include a UK or crown dependency address for the business or importer responsible for the information on the label. An EU address alone will no longer be sufficient for the GB market, other than as allowed during the period of adjustment. This applies to all of the changes below, other than GIs.

2.16 **Caseins:** Must be labelled with an address that is in the UK for the responsible business when making business-to-business exchange of goods e.g. when in large, non-retail containers. An EU address alone will no longer be sufficient for the UK market.

2.17 **Honey:** The rules will be amended so that the origin of blended honey can simply be labelled as 'a blend of honeys from more than one country' or similar where it comprises of honey from several countries. Provision for this is therefore included in the instrument.

2.18 **Meat and minced meat and trimmings (excluding beef):** EU-centric terms will either no longer be allowed or have to be substituted with "UK" and/or "non-UK". Provision for this is therefore included in the instrument.

2.19 **Wine:** Laws are being amended to ensure operability of the legislation immediately upon the end of the Transition Period. The amendments will remove obsolete references and updates responsibilities to reflect the UK is no longer in the EU. It will also provide a 21-month period of adjustment to allow business sufficient time to adjust to the requirement that an importer of wine must be located in GB.

2.20 Domestically, provisions enabling a period of adjustment have been added to the Food Information Regulations 2014, the Country of Origin of Certain Meats (England) Regulations 2015, the Honey (England) Regulations 2015 and the Caseins and Caseinates (England) Regulations 2017 to allow businesses sufficient time to adjust to these changes that arise as a result of the UK no longer being in the EU. The provisions require enforcement bodies not to enforce against failures to comply with the labelling rules during this period if certain conditions are met. This includes a transitional period of three years for the use of **geographical indication** (GI) designations on labelling of products, and a period of 21 months for the other labelling changes. This is further explained at section 7.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument was presented for consideration by the Sifting Committees on 11th January 2020 as a proposed negative procedure. On 26th January the Sifting Committes recommended this instrument was uplifted to an affirmative procedure. This will result in the instrument being laid as a draft affirmative with debates to be scheduled in both Houses. The House of Lords Secondary Legislation Scrutiny Committee raised two areas of interest which it believes the Lords may wish to explore via debate; the use of EU-origin designators on the GB market following the period of adustment, and what steps will be taken at the end of the period of adjustment to allow NI food labelled as required for the NI market unfettered access to the GB market.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see powers conferred by sections 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018) and the instrument includes provisions which apply to Scotland.

4. Extent and Territorial Application

4.1 The territorial extent and application of this instrument matches the extent and application of the domestic regulations and retained law being amended.

4.2 As regards the retained law amended by this instrument, this is incorporated into domestic law under section 3 of the European Union (Withdrawal) Act 2018 save insofar as it applies to Northern Ireland for the purposes of the Northern Ireland Protocol. Accordingly, this instrument will be of no practical application in Northern Ireland as the Protocol instead applies the EU law provisions in Northern Ireland.

5. European Convention on Human Rights

5.1 Victoria Prentis MP, Parliamentary Under-Secretary of State, at the Department for Enviornment, Food and Rural Affairs, has made the following statement regarding Human Rights:

"In my view the provisions of the Food and Drink (Miscellaneous Amendments Relating to Food and Wine Composition, Information and Labelling) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is made under powers in the European Union (Withdrawal) Act 2018 to address deficiencies in retained EU law.

6.2 Amendments are made to the following domestic legislation:

- The Food Information Regulations 2014
- The Country of Origin of Certain Meats (England) Regulations 2015
- The Honey (England) Regulations 2015
- The Caseins and Caseinates (England) Regulations 2017

6.3 Amendments are made to the following retained EU Regulations:

- Regulation (EU) No 1169/2011 of the European Parliament and of the Council
- Commission implementing Regulation (EU) No 1337/2013
- Commission implementing Regulation (EU) No 2018/775
- Commission Delegated Regulation (EU) 2019/33
- Commission Delegated Regulation (EU) No 2019/934
- Commission Implementing Regulation (EU) No 2019/935

7. Policy background

What is being done and why?

7.1 The instrument will, as far as possible, provide that retained EU law and existing domestic law has the same effect as current legislation, ensuring that consumers and businesses are able, after the end of the Transition Period, to provide and make use of the same information, presented in the same way as before. This instrument provides for the changes required as a result of the UK no longer being in the EU.

7.2 **Food information to consumers:** Food placed on the GB market will need to bear the UK address of the food business responsible for the food information on the label. Currently, this address may be in any of the 27 EU Member States.

7.3 The change in 7.2 is needed to ensure there is a direct and simple way for consumers and enforcement officers (Trading Standards) to contact those responsible for the information provided on the label of a food.

7.4 **Caseins:** Provisions are included to require caseins which are sold in business-to-business transactions to be labelled with the address of the responsible business operator in the UK so as to ensure accurate UK-focused information is provided on the label.

7.5 **Honey:** Following the end of the Transition Period it is no longer appropriate for the UK to use EU-centred terms. This instrument amends our rules so that origin blended honey can simply be labelled as 'a blend of honeys from more than one country' or similar where it comprises of honey from several countries.

7.6 **Meat (excluding beef):** The use of non-country specific origin indicators for non-beef meat as provided for in Articles 5 and 6 of Regulation 1337/2013 is amended to remove the availability of 'EU', 'Non-EU' or 'several Member States of the EU' as indications of the place of origin or rearing. Instead, the amended legislation will allow the use of 'non-UK' where the country in which the period of rearing specified in this legislation according to species is not available or the indication 'several countries' in the case of meat reared in several non-UK countries.

7.7 **Minced meat and trimmings (excluding beef):** Non country-specific origin 'indicators' will continue to be permitted for non-beef minced meat and trimmings where rearing and/or slaughtering has taken place outside the UK. The EU-centric indications 'EU', 'Non-EU' and 'EU and Non-EU' provided for on the EU market will no longer be suitable in the UK context and will not be permitted. The new option of "non-UK" used on its own or with "UK" will be permitted as appropriate. This does not preclude the use of country specific origin labelling of non-beef minced meat and trimmings instead.

7.8 For the changes in 7.2 through to 7.7 a 21-month period of adjustment has been provided for governing enforcement in England to allow businesses sufficient time to adjust to these new labelling requirements. Wales and Scotland plan to introduce similar provisions, so providing for a cross GB period of adjustment.

7.9 **Wine:** The instrument will, as far as possible, provide that retained EU law, and existing domestic law, has the same effect as current legislation and reflects that the UK is no longer part of the EU. It introduces transitional arrangements that will allow wine products to be marketed with an EU or a UK importer until 1 October 2022. It also makes various changes to technical rules on the oenological practices and

processes to make these applicable to wine production in the UK and where necessary the responsibilities placed on Ministers or authorities.

7.10 **Geographical Indications (wines and agri-foods):** Part 2 of the instrument inserts transitional provisions into the domestic Food Information Regulations 2014 as a result of the UK's exit from the EU. Inserted regulation 16 (2) to (7) concern the use of geographical indication (GI) designations on product labelling. These designations, as at 7.13 of this document, inform the consumer that the product name has been through a rigorous EU GI scheme application process, resulting in intellectual property protection. Use of that product name and the accompanying GI designation can then only be used by those verified as adhering to the product standard.

7.11 The inserted provision legislates that an authorised officer of a food authority (e.g. a Trading Standards officer) must not serve an improvement notice for a failure to comply with this specified labelling infringement (e.g. GI designation use on the label of a product that does not have GI status) **if** that product was placed on the market during the "relevant period" **and** would have complied with the law immediately before the end of the Transition Period. That would mean in practice, any GI product names that were protected domestically before the end of the Transition Period, but which are no longer protected in Great Britain from 1 January 2021.

7.12 The "relevant period" is a period of three years, which begins the day after the last day of the Transition Period. For agri-food products, the transitional provision limiting the power of enforcement officers comes to an end at the end of the relevant period and they are subject to enforcement action if they remain on the market after that point. However, for wine products, the three year 'relevant period' does not apply and instead they can continue to be marketed until stocks are exhausted. This approach recognises the longer shelf-life that is typical for wine products.

7.13 This rule encompasses the following designations and acronyms referred to in the instrument as 'specified products';

"Protected Designation of Origin" ("PDO"),

"Protected Geographical Indication" ("PGI")

"Traditional Speciality Guaranteed" ("TSG")

7.14 It also extends to EU language translations of these designations, as listed at paragraphs 5, 6 or 7 of Annex 10 of Commission Implementing Regulation (EU) No 668/2014, as that Regulation had effect in EU law immediately before the end of Transition Period. By virtue of these specified designations, this provision only relates to products protected under the wine and agri-food GI schemes; it does not encompass spirit drink or aromatised wine GIs.

7.15 It should be noted that this provision does not extend to products purporting to be, or evoking GIs protected in Great Britain after exit; whether this protection is afforded by their presence on the domestic GI registers, including through trade agreements. This will ensure that the relevant enforcement body is not stopped from enforcing against cases of product name or designation misuse after the end of the Transition Period with regards genuine GI registered product names.

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

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under paragraph 21 of Schedule 7 to the 2018 Act. 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 **Food information to consumers labelling:** The public consultation, Food Labelling: Amending Laws, was carried out in the 4 weeks up to the 4th December 2018. A Government response was issued on the 5th February 2019.

10.2 **Honey and Caseins:** Policy options for the labelling of honey blends and minor amendments to the Caseins and Caseinates Regulations were covered in a 4-week public consultation which closed on 13th November 2018.

10.3 The consultation in the case of honey labelling explored the different options and policy positions as tackled by these amending regulations.

10.4 The response rate was low, and Defra considers this was due to the extensive and prolonged consultation activity with key stakeholders that took place since the beginning of that year which had already informed the development of proposals which were subject to formal consultation.

10.5 The responses favoured in their majority the option for labelling honey blends now represented in the text of the secondary legislation subject of this explanatory memorandum. No substantive comments were received during the consultation regarding minor amendments proposed.

10.6 The responses to these consultations were considered in deciding that the period of adjustment should be 21 months.

10.7 **Wine:** We have been in regular contact with the Wine and Spirits Trade Association and WineGB who represent the majority of wine sector businesses in the UK and Food Standards Agency and Food Standards Scotland the designated competent control bodies. All have supported the work we are doing to make wine law operational in the UK and the introduction of transitional measures for labelling wine products and removing or reducing relabelling costs.

10.8 **Geographical Indications:** The three-year labelling transition period applied here aligns with the three-year period until use of the new UK GI logo becomes mandatory. The latter was publicly consulted upon in Autumn 2018 and agreed by the majority of respondents. The same transitional timing has therefore been applied to this form of GI labelling too.

10.9 The Devolved Administrations have been informed throughout the making of this SI and they are content.

11. Guidance

11.1 Relevant guidance will be updated and published.

12. Impact

12.1 There is no significant impact on business, charities or voluntary bodies.

12.2 There is no significant impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument as its purpose is to maintain the operability of the existing regimes.

13. Regulating small business

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

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

14. Monitoring & review

14.1 As these instruments are made under the powers in the European Union (Withdrawal) Act 2018, no review clause is required. Defra and its agencies will, however, monitor and review the impact of the instruments as part of its standard policy-making procedures, and will ensure that the provisions are adhered to.

15. Contact

15.1 Savannah-Rae Squair, at the Department for Environment Food and Rural Affairs Telephone: 02087200382 or email: savannah-rae.squair@defra.gov.uk can be contacted with any queries regarding this instrument.

15.2 Karen Lepper, Deputy Director for Consumers and Sustainability at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Ananda Guha, Deputy Director for Food Exports, Promotion and Partnerships at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.4 Victoria Prentis MP, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

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

"In my view the Food and Drink (Miscellaneous Amendments Relating to Food and Wine Composition, Information and Labelling) Regulations 2021 does no more than is appropriate".

1.2 This is the case because the instrument provides for the continued effective functioning of the policy regimes described in sections 2.2 and 2.3 of this Explanatory Memorandum, after the UK has withdrawn from the EU.

2. Good reasons

2.1 The Parliamentary Under Secretary of State for Food and Animal Welfare, 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 These are that without this instrument, certain retained EU law and domestic laws implementing European law will not work properly, and the amendments made by this instrument will address those deficiencies.

3. Equalities

3.1 The Parliamentary Under Secretary of State for Food and Animal Welfare, 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 Food and Animal Welfare, 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.