EXPLANATORY MEMORANDUM TO

THE COMMON ORGANISATION OF THE MARKETS IN AGRICULTURAL PRODUCTS FRAMEWORK (MISCELLANEOUS AMENDMENTS) (EU EXIT) REGULATIONS 2019

THE MARKET MEASURES (MARKETING STANDARDS) (AMENDMENT) (EU EXIT) REGULATIONS 2019

THE MARKET MEASURES PAYMENT SCHEMES (MISCELLANEOUS AMENDMENTS) (EU EXIT) REGULATIONS 2019

AND

THE MARKET MEASURES (MISCELLANEOUS PROVISIONS) (AMENDMENT) (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 and is laid before Parliament by Act.

2. Purpose of the instrument

2.1 This Explanatory Memorandum covers four statutory instruments which together amend retained European Union ("EU") legislation relating to the Common Market Organisation ("CMO") with a common objective of, directly or indirectly, supporting prices received by agricultural producers, and the Agri-Promotion scheme. These instruments will address operability issues created by the United Kingdom ("UK") leaving the EU. These instruments will ensure that the CMO can continue to operate effectively after EU Exit.

2.2 The four instruments are as follows:

- The Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments) (EU Exit) Regulations 2019,
- The Market Measures (Marketing Standards) (Amendment) (EU Exit) Regulations 2019,
- The Market Measures Payment Schemes (Miscellaneous Amendments) (EU Exit) Regulations 2019,
- The Market Measures (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2019.

2.3 These four instruments amend the retained EU legislation providing rules for the functioning and administration of the Common Organisation of Agricultural Markets and the Agri-Promotion scheme under the powers granted by the EU (Withdrawal) Act 2018.

Explanations

What did any relevant EU law do before exit day?

2.4 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. 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:

(i) manage market volatility;

(ii) incentivise collaboration between and competitiveness of agricultural producers; and

(iii) facilitate trade.

Why is it being changed?

2.5 After EU Exit and without amendment, the above retained EU legislation would 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 sector. These instruments 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 These instruments therefore use powers in the European Union (Withdrawal) Act 2018 to make predominately technical changes to the above legislation to ensure that it remains coherent and continues to function correctly after the UK has left the EU. This will provide clarity to stakeholders.

What will it now do?

2.7 These instruments will ensure that the policies outlined above will operate effectively after EU Exit. The appropriate legislative "fixes" introduced by these instruments will maintain continuity, as far as possible and will have no noticeable impacts on the ground for the agricultural sector. More information on the specific changes being made is at Annex B of 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 The powers under which this instrument is made cover the entire United Kingdom (see section 24 of the EU (Withdrawal) Act 2018) 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 these instruments is the UK. Provisions in The Market Measures (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2019 have different extent depending on the extent of the legislation that is the subject of amendment.

4.2 The territorial application of these instruments is the UK. Provisions in The Market Measures (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2019 have different application 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, George Eustice MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Market Measures Payment Schemes (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 instrument 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 work properly after exit.

6.2 The corrections made by these instruments relating to CAP (and 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, but with provision for the Secretary of State to act on behalf of Scottish Ministers, Welsh Ministers or DAERA, where the Ministers or Department consent. 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. In certain cases, the ability of the Secretary of State to act with the consent of Ministers does not apply to Wales. 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 4 constituent nations agree.

7. Policy background

What is being done and why?

7.1 These instruments make the corrections necessary to existing EU legislation to ensure that the legislation governing the CMO and Agri-Promotions can operate effectively after EU Exit. See Annex B for details.

7.2 The policy areas contained in these regulations can be broadly broken down into: public intervention and aid for private storage, aid schemes, marketing standards, producer organisations, import and export rules and crises measures.

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 State references. The approach when amending retained EU law has been to keep that retained legislation as close to the current system where possible. All legislative functions are being transferred in a separate SI.

7.3 Regulation 4 of the Market Measures (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2019 (amendment of the Reporting of Prices of Milk Products Regulations (Northern Ireland) 2008) applies to agriculture, which is a transferred matter for Northern Ireland under the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent a Northern Ireland Executive. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

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 (EUWA) in order to address failures of retained EU law to operate efficiently 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 the Annex to this Explanatory Memorandum**.**

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 food. No changes were made to the proposed approach on the basis of this consultation. In addition, Defra has engaged with relevant stakeholders 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 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 these instruments. They are:

i) https://www.gov.uk/government/publications/producing-and-labelling-food-if-theres-no-brexit-deal

ii) 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 As explained above these changes in regulation are intended to maintain the status quo in terms of business's 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 business. The UK Government will work with relevant bodies to ensure that information is communicated to stakeholders as early as possible.

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 2018, no review clause is required. The Department for Environment, Food and Rural Affairs 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 Jean Williams at the Department for Environment, Food and Rural Affairs Telephone: 020 802 65991 or email: jean.williams@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Fiona James and Elen Shepard, Deputy Director for The Common Market Organisation, 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, 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 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 Framework (Miscellaneous Amendments) (EU Exit) Regulations 2019, The Market Measures (Marketing Standards) (Amendment) (EU Exit) Regulations 2019, the Market Measures Payment Schemes (Miscellaneous Amendments) (EU Exit) Regulations 2019, and The Market Measures (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate".

1.2 This is the case because: the amendments made by these instruments are the minimum required to ensure that existing domestic legislation remains operable after the United Kingdom ("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 in the Explanatory Memorandum, sub-paragraphs 1 to 7.

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 these instruments, and I have concluded they are a reasonable course of action".

2.2 These are: 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 in the Explanatory Memorandum, sub-paragraphs 1, 2, 3, 4, 5 and 7).

3. Equalities

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

"The draft instruments do 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 Explanatory Memorandum.

Annex B

Summary of amendments

The Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019	
Council Regulation (EU) No 1308/2013 of the European Parliament and of the Council	This Regulation provides the basic framework for CMO across the range of aid schemes, producer organisations, licencing and tariffs for imports and exports and market intervention including crisis powers. This instrument will provide operability fixes to the existing provisions under the EUWA 2018. The policy areas contained in the relevant regulations are public intervention and aid for private storage, aid schemes, marketing standards, producer organisations, import and export rules, and crisis measures. All legislative functions are being transferred in a separate SI.
Council Regulation (EU) No 1370/2013 of 16 December 2013 determining measures on fixing certain aids and refunds relating to the common organisation of markets in agricultural products	This regulation 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 charge and refunds and fixing of export refunds. This instrument will provide operability fixes to the existing provisions under the EUWA 2018.
Regulation (EU) No 1144/2014 of the European Parliament and of the Council on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries	This regulation provides for EU funding to bodies which submit successful proposals (as decided by the European Commission) for delivering promotional measures boosting the image of agricultural products in the eyes of consumers in the EU and in third countries. These measures are particularly designed to address the quality, nutritional value and safety of foods and their methods of production. Examples of such measures are those for promoting fruit and vegetables, dairy products, meat and the EU Protected Designation of Origin and Protected Geographical Indication scheme. The amendments will allow existing simple programmes to continue uninterrupted, but "multi programmes" will not be operable once the UK ceases to be a Member State so these particular provisions are omitted. This is because multi programmes are designed

	to benefit producers across more than one EU Member State. All legislative functions are being transferred in a separate SI.
The Market Measures (Marketing Standards) (Amendment) (EU Exit) Regulations 2019	
Commission Implementing Regulation (EU) No 1333/2011 of 19 December 2011; Titles II and III of Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 (Title I of which is amended by the Livestock (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2019 and the Animals (Legislative Functions) (EU Exit) Regulations 2019); Commission Regulation (EC) No 1825/2000 of 25 August 2000; Commission Regulation (EC) No 566/2008 of 18 June 2008; Commission Delegated Regulation (EU) 2017/1182 of 20 April 2017; Commission Implementing Regulation (EU) 2017/1184 of 20 April 2017; Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 (save for (i) Title III; Commission Regulation (EC) No 1850/2006 of 14 December 2006; Commission Regulation (EC) No 1295/2008 of 18 December 2008; Commission Regulation (EC) No 445/2007 of 23 April 2007; and Commission Regulation (EC) No 2004/2002 of 8 November 2002.	The marketing standards element of the CMO is designed to ensure a stable market for agricultural goods through the enforcement of even standards for certain agricultural goods, preventing the market from being flooded by cheaper substandard goods. This instrument will provide workable fixes to ensure operability of marketing standards. Marketing standards aim to develop commonly understood trading references which support the efficient transfer of products through markets, both domestic and international, and protect consumers by making product information transparent. In particular, this instrument relates to: technical definitions; classification; presentation; marking and labelling; packaging; production methods; conservation; storage; transport; related administrative documents; certification and restrictions on use. This instrument aims to minimise disruption to the flow of goods while preserving standards, and to make marketing standards legislation appropriate to the domestic context of the United Kingdom after EU Exit. The proposals in this instrument are designed to be as minimal as is practicable, in order to prevent wastage and reduce burden on producers, but as robust as required to ensure that UK consumers can be confident that product information is transparent and accurate.
The Market Measures Payment Schemes (Miscellaneous Amendments) (EU Exit) Regulations 2019	
Commission Regulation (EC) No 1312/2008 fixing the conversion rates, the processing costs and the value of the by-products for the various stages of rice processing	Regulation (EC) No 1312/2008 creates provisions related to market intervention and trade measures and applies to a variety of rice products, such as rice flour and flaked rice grains.

Commission Delegated Regulation EU 1829/2015 of 23 April 2015 supplementing Regulation (EU) No 1144/2014 of the European Parliament and of the Council; Commission Implementing Regulation EU 1831/2015 of 7 October 2015	These regulations concern promotions and information measures providing additional detail on the operation of the scheme. This includes requirements for applications for funding, and for the promotions activities themselves. The specific objectives of the information provision and promotion measures are to increase awareness of the merits of EU agricultural products and of the high standards applicable to the production methods in the EU and increase the competitiveness and consumption of the EU agricultural products and certain food products and to raise their profile both inside and outside the EU. The aim of the promotions scheme is to increase the awareness and recognition of EU quality schemes and increase the market share of EU agricultural products.
Commission Delegated Regulation (EU) 1238/2016 of 18 May 2016; and Commission Implementing Regulation (EU) 1240/2016 of 18 May 2016.	These regulations concern public intervention and private storage aid. The aim of these schemes is to provide a safety net to farmers by removing surplus products from the market and thereby stabilising market prices. This is done by monitoring the market price of certain eligible goods. When the market situation so requires (for example, when prices are low), eligible goods may be bought in, stored and resold once prices have risen (public intervention). Producers can also be paid a sum to store products for an agreed period of time to remove them from the market (private storage aid). The rules and requirements for the two schemes have not been changed. Amendments to the legislation to make these schemes operable is largely about who will carry out a function, rather than changing the function itself.
The Market Measures (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2019	
This statutory instrument makes operability amendments to align domestic regulations that fall under the CMO with the amended retained direct EU legislation. These domestic regulations are: The Hops Certification Regulations 1979;	This is a suite of domestic statutory instruments that enable EU rules for marketing standards namely; • Beef and veal labelling in England

The Reporting of Prices of Milk Products (England) Regulations 2008; The Reporting of Prices of Milk Products (Northern Ireland) Regulations 2008 The Marketing of Fresh Horticultural Produce Regulations 2009; The Beef and Veal Labelling Regulations 2010; The Quality Standards for Green Bananas (England and Wales) Regulations 2012; The Olive Oil (Marketing Standards) Regulations 2014; The Milk and Milk Products (Pupils in Educational Establishments) (England and Northern Ireland) Regulations 2017; and The Carcase Classification and Price Reporting (England) Regulations 2018.	• Carcase classification and price reporting in England • Quality of green bananas in England and Wales • Olive Oil marketing standards in the UK. • Marketing of Fresh Horticultural Produce Amendments are also made to an instrument that implements the School Milk scheme in England and Northern Ireland and instruments that enable authorities in England and Northern Ireland to request information on the prices of milk and milk products. These provisions, subject to the correction of deficiencies, will continue to apply when the UK exits the EU.

General points

Amendments relating to legislative functions are made to Regulation (EU) No 1308/2013, Regulation (EU) No 1370/2013 and Regulation 1144/2014 in The Agriculture (Legislative Functions) (EU Exit) (No.2) Regulations 2019.
Regulation (EU) No 1308/2013, Regulation (EC) No 566/2008, Regulation (EU) No 543/2011 and Regulation (EC) 1295/2008 are also further amended in The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019.
Some provisions relating to import tariff policy within Regulation (EU) No 1308/2013 are not being retained due to the Taxation (Cross-border Trade) Act 2018.