EXPLANATORY MEMORANDUM TO

THE ORGANIC PRODUCTS (PRODUCTION AND CONTROL) (AMENDMENT) (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.

2. Purpose of the instrument

2.1 This instrument ensures that organic rules are updated in preparation for the end of the Transition Period by amending deficiencies within the retained EU legislation. This instrument also makes the necessary amendments to ensure that the Regulations adequately reflect the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement ("the Protocol").

2.2 This instrument will amend retained EU law relating to organic production and existing domestic secondary legislation which itself amends retained EU Organics legislation. The amendments will ensure alignment with the Protocol and make further operability amendments.

Explanations

What did any relevant EU law do before exit day?

2.3 Organic food has been strictly regulated in the UK and in other EU Member States by Council Regulation (EC) No 834/2007 and Commission Regulations (EC) Nos 889/2008 and 1235/2008 ("the Regulations"). The Regulations set out the requirements for organic production, processing, labelling and imports, and the inspection systems that must be in place to ensure the requirements are met. The Regulations apply to organic food, feed and vegetative propagating material or seeds for cultivation.

Why is it being changed?

2.4 In accordance with the European Union (Withdrawal) Act 2018, the existing EU Regulations relating to organic policy will be retained into UK law and continue to apply at the end of the Transition Period.

2.5 Statutory Instruments laid in 2019 for a 'no deal' scenario fixed deficiencies such as amending references to 'Member States' to 'UK' or 'Commission' to 'Secretary of State' so they would be operable when applied in a UK- only context. This instrument makes changes to ensure that these amendments work in GB law following the Protocol. The references to 'UK' have been amended to 'GB' where they apply in a GB- only context.

2.6 This instrument makes an amendment to Commission Regulation (EC) No 889/2008 to allow continuity for 5% non-organic protein feed derogation for porcine and poultry for the periods 2021 and 2022.

2.7 This instrument makes amendments to the following instruments which were laid in 2019; the Organic Production and Control (Amendment) (EU Exit) Regulations 2019, and the Organic Products (Amendment) (EU Exit) Regulations 2019.

2.8 Two further instruments will be made; The Common Organisation of Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2020 which amends reserved elements to ensure the operability of the retained import regulation (Commission Regulation 1235/2008) whilst also making amendments to ensure operability for the Protocol and The Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2020, which amends the Agriculture (Legislative Functions) (EU Exit) (No.2) Regulations 2019.This instrument amends references to 'UK' to 'GB where this applies in a GB-only context.

What will it now do?

2.9 This instrument will use powers in the European Union (Withdrawal) Act 2018 to make operability amendments to the retained EU legislation in order to ensure that it remains coherent and continues to function as intended after the UK has left the EU.

2.10 This instrument will ensure that the retained EU legislation aligns with the provisions of the European Union (Withdrawal) Act 2018, including the implementation of the Protocol and remove ambiguities and inconsistences whilst still maintaining continuity as far as possible. As such, whilst this will provide clarity to stakeholders, the amendments are unlikely to have any noticeable impact on the organic sector.

2.11 The current organic standards will be maintained at the end of the Transition Period. The certification and traceability of organic food and feed products will continue to be required. This instrument will make the necessary amendments to ensure that the Regulations adequately reflect the Protocol and ensure any deficiencies have been fixed to ensure that the legislation remains operable.

2.12 Further detail on the specific changes being made by these instruments is in Section 7 and Annex 2 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.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 24 of the European Union (Withdrawal) Act 2018) and the extent and application is as detailed in section 4 below.

4. Extent and Territorial Application

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

4.2 As regards the retained law amended by this instrument, and the retained law amended by the domestic regulations 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 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 The Parliamentary Under Secretary of State of Agriculture, Fisheries and Food, Rt Hon Victoria Prentis MP, has made the following statement regarding Human Rights:

"In my view the provisions of The Organic Products (Production and Control) (Amendment) (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument makes amendments to retained direct EU legislation either directly or through amendments to earlier exit SIs. Under section 3 of the European Union (Withdrawal) Act 2018, existing EU Regulations concerning organics (Regulation (EC) No 834/2007, Regulation (EC) No 889/2008 and Regulation (EC) No 1235/2008) will be incorporated into domestic law at the end of the Transition Period, as amended by this instrument and the instruments referred to in section 2.6. The EU Regulations will continue to have effect in Northern Ireland under the Protocol.

7. Policy background

What is being done and why?

7.1 The existing domestic secondary legislation which itself amends retained EU legislation was drafted for the UK on the basis that the UK would leave with EU without an agreement. As the UK withdrew from the EU on 31 January 2020, with an agreement in place, the legislation needs to be updated to reflect this and the provisions of the European Union (Withdrawal) Act 2018, in particular, the Protocol.

7.2 The UK has more than 6000 organic operators, many farmers and small and medium-sized enterprises who would be particularly vulnerable if the retained EU organic legislation were not updated.

7.3 The organic sector is worth £2.3BN pa to the UK economy, and in growth. Exports are worth around £250M to the UK economy. Therefore, a fully operational organic regime is essential to ensure the sector can continue to operate after exit day.

7.4 A detailed explanation of the amendments being made within these instruments can be found in Annex 2 of this Explanatory Memorandum.

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

8.1 This instrument is being made using the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 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. This instrument is also made under section 8C of and paragraph 21 of schedule 7 to the European Union (Withdrawal) Act 2018. 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 has no plans currently to consolidate the legislation that is amended by this instrument.

10. Consultation outcome

10.1 This instrument has been developed in conjunction with the Devolved Administrations by way of regular meetings and *ad-hoc* communications.

10.2 We have worked with the United Kingdom Organic Certifiers Group (UKOCG) as industry representatives to ensure their awareness of the changes in this instrument and on the future implementation of the UK Regulations following the end of the Transition Period.

11. Guidance

11.1 We will continue to engage with the UK organic sector to ensure they are aware of these changes. Defra is not producing any specific guidance on these instruments, as they will only make minor amendments to the recently created existing domestic law arising from the UK's withdrawal from the EU

12. Impact

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

12.2 An Impact Assessment has not been prepared for this instrument as no, or no significant impact on the private or voluntary sector is foreseen.

12.3 As explained above these changes to the 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 direct result of this instrument. 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.

13. Regulating small business

13.1 The Regulations apply to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to retain the EU Regulations relating to organic policy as they apply directly before the end of the Transition Period. This instrument ensures the Regulations will be operable and therefore, any direct impact will be minimal.

14. Monitoring & review

14.1 The approach to monitoring this legislation is continued liaison with the organic sector to ensure there are no unintended consequences.

14.2 As this instrument is made under the EU (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Megan Young at the Department for Environment, Food and Rural Affairs Telephone: 07881251461 or email: Megan.young@defra.gov.uk can be contacted with any queries regarding this instrument.

15.2 Ruhena Ahmed, Deputy Director for Farming Food Sectors and Trade, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rt Hon Victoria Prentis MP, Parliamentary Under Secretary of State for Agriculture, Fisheries and Food, 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
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	State why it is appropriate to create such a sub-delegated power.

		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.	
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.

Annex 1

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 Agriculture, Fisheries and Food, Rt Hon Victoria Prentis MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"The Organic Products (Production and Control) (Amendment) (EU Exit) Regulations 2020 do no more than is appropriate"

1.2 This is the case because the amendments to domestic legislation and instruments are the minimum required to make the legislation operable and are not significant in that they maintain current regulatory standards.

2. Good reasons

2.1 The Parliamentary Under Secretary of State for Agriculture, Fisheries and Food, Rt Hon 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: the amendments made to the legislation are the minimum required to make the legislation operable.

3. Equalities

3.1 The Parliamentary Under Secretary of State for Agriculture, Fisheries and Food, Rt Hon Victoria Prentis MP has made the following statement:

"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 Agriculture, Fisheries and Food, Rt Hon Victoria Prentis 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, 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.

Annex 2

Further detail on the amendments made by this instrument set out in the main body of this Explanatory Memorandum

THE ORGANIC PRODUCTS (PRODUCTION AND CONTROL) (AMENDMENT) (EU EXIT) REGULATIONS 2020

1. Further detail on the retained EU Organics legislation and existing domestic secondary legislation amended by this instrument.

1.1 The Organic Products (Production and Control) (Amendment) (EU Exit) Regulations 2020 amends the retained EU legislation and existing domestic secondary legislation below:

- Commission Regulation (EC) No 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control
- The Organic Production and Control (Amendment) (EU Exit) Regulations 2019
- The Organic Products (Amendment) (EU Exit) Regulations 2019

2. Detail on the amendments made by The Organic Products (Production and Control) (Amendment) (EU Exit) Regulations 2020

Commission Regulation (EC) No 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control

2.1 This instrument will make amendments to the legislation in order to ensure continuity and allow derogations to be permitted for 5% non-organic protein feed for porcine and poultry for the period 2021 and 2022.

The Organic Production and Control (Amendment) (EU Exit) Regulations 2019

2.2 This instrument will make minor amendments to the legislation in order to account for the Protocol and ensure operability. For example, where applicable, references that include or relate to Northern Ireland will be amended, clarified or omitted.

The Organic Products (Amendment) (EU Exit) Regulations 2019

2.3 This instrument will make minor amendments to the legislation in order to account for the Protocol and ensure operability. For example, where applicable, references that include or relate to Northern Ireland will be amended, clarified or omitted.