EXPLANATORY MEMORANDUM TO

THE STATE AID (AGRICULTURE AND FISHERIES) (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 instrument corrects deficiencies in retained EU law arising from the UK's withdrawal from the EU, thereby ensuring that the State aid regime in relation to agriculture and fisheries is operable after the UK leaves the EU.

Explanations

What did any relevant EU law do before exit day?

2.2 The relevant EU Regulations exempted certain categories of agricultural and fisheries funding from the State aid requirements under Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU) under:

- Regulation (EU) No 702/2014 – Agricultural Block Exemption Regulation
- Regulation (EU) No 1388/2014 – Fisheries Block Exemption Regulation

It provided that agricultural and fisheries aid under a certain ("de minimis") threshold does not meet the criteria necessary to constitute State aid under the following Regulations:

- Regulation (EU) No 1408/2013 – Agricultural De Minimis
- Regulation (EU) No 717/2014 – Fisheries De Minimis

The relevant EU Regulations also exempted aspects of Common Agricultural Policy (CAP) funding from the State aid requirements under Articles 107 and 108 of the TFEU. These Regulations are:

- Regulation (EU) No 1303/2013 – CAP Common Provisions Regulation
- Regulation (EU) No 1305/2013 – Rural Development Regulation
- Regulation (EU) No 1307/2013 – Direct Payments Regulation
- Implementing Regulation (EU) No 808/2014 – Implementing Regulation under Rural Development Regulation

The Commission has recently agreed on a set of amendments to the Agricultural Block Exemption Regulation and the Agricultural De Minimis Regulation. The Commission's amendments to the Agricultural Block Exemption Regulation are in order to bring the Agricultural Block Exemption Regulation back into line with the Rural Development Regulation. Changes to the Agricultural De Minimis Regulation were also made. The amendments to the De Minimis Regulation increase the De Minimis ceilings per beneficiary, and the Member State caps.

The State Aid (Agriculture and Fisheries) (Amendment) (EU Exit) Regulations 2019 reflects the changes made by the Commission to these Regulations.

Why is it being changed?

2.3 These EU Regulations are being changed to make them operable as domestic legislation after the UK's withdrawal from the EU. Without this legislation, aid that currently benefits from the exemptions may not be lawful and there would therefore be issues with making payments (including under rolled over CAP and Common Fisheries Policy (CFP) Regulations) once the UK leaves the EU. In particular, each payment may have to be notified to, and approved by, the Competition and Markets Authority.

What will it now do?

2.4 This instrument will correct deficiencies arising from the UK's withdrawal from the EU and guarantee legal operability; without operability amendment and restatement of the Regulations policy absurdity would occur due to the references to the EU State aid regime and process. This instrument will do no more than is appropriate in ensuring that deficiencies are corrected upon leaving the EU, and where appropriate, that retained EU law is stated in a clearer and more accessible way.

2.5 This instrument complements the State Aid (EU Exit) Regulations 2019 Statutory Instrument ("the State Aid Framework SI") laid by the Department for Business, Energy and Industrial Strategy (BEIS). The State Aid Framework SI will stand up the domestic regime and amend deficiencies in retained EU law including the General Block Exemption Regulation (No 651/2014) and the General De Minimis Regulation (No 1407/2013). It also transfers monitoring and reporting functions from the European Commission to a UK domestic regulator – the Competition and Markets Authority (CMA).

2.6 This instrument ensures that the current agricultural, fisheries and CAP exemptions from the EU State aid regime are operable. It corrects deficient references throughout the amended Regulations to, for example, the Commission, Member States, and the internal market. For example, in Article 5 of Agricultural Block Exemption Regulation, references to Commission Notices are being replaced with references to CMA statements of policy. The instrument transfers a number of minor Commission functions to the domestic regulator. For example, when the UK has exceeded its annual State aid budget, certain categories are then only exempted from State aid rules for a 6 month period. The instrument gives the CMA the power to extend this 6 month period. The instrument also makes minor amendments to other CAP legislation in the area of State aid. This is to ensure that these State aid clauses, which ensure the proper operation of funding arrangements under the retained CAP Regulations, continue to operate effectively after EU Exit.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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

3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for Food and Animal Welfare, David Rutley, MP, has made the following statement regarding Human Rights:

"In my view the provisions of the State Aid (Agriculture and Fisheries) (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The UK is leaving the European Union and this instrument makes technical changes to retained EU law to make it operable after the UK's withdrawal from the EU. It corrects deficiencies such as the conferral of functions on EU entities (the Commission) which will no longer exercise those functions in the UK after Exit day. The CMA will become the new regulator for the State aid regime after our departure from the EU.

6.2 The State Aid Framework SI laid by BEIS will provide the framework of post-exit domestic State aid rights, powers, liabilities, obligations, restrictions, remedies and procedures. It will provide, for example, that unless exempted from the requirements, State aid must in principle be notified to and approved by the CMA. It will also amend deficiencies in retained EU law including the General Block Exemption Regulation (No 651/2014) and the General De Minimis Regulation (No 1407/2013).

6.3 This instrument will rely on the legislative framework laid down by the BEIS State Aid Framework SI, and the operability amendments will align with, and as far as possible, mirror the language of the amendments made by the State Aid Framework SI laid by BEIS

7. Policy background

What is being done and why?

7.1 This instrument will correct deficiencies in the retained EU state aid regime in relation to agriculture and fisheries in order to make it operable in the UK when the UK leaves the EU. In preserving and making the existing EU Regulations for Day 1 operable, there is no intention to change any of the substance of their content or how they operate.

7.2 One key area of amendments is the references to "Member State". A number of functions under the Regulations are currently carried out by the United Kingdom as a Member State. In replacing these deficient references to "Member State", the instrument has sought to maximise certainty while maintaining the appropriate flexibility to ensure that the Regulations can operate effectively and efficiently after EU Exit.

7.3 Many of these functions relate to the circumstances of the particular aid scheme. They will therefore, after EU Exit, be carried out by the "aid grantor". Other functions have more of a cross-cutting impact, affecting multiple aid schemes, which may have multiple different aid grantors. In the Agricultural Block Exemption Regulation, in

order to maintain the established pre-exit practice for the carrying out of these functions, they will be carried out by the "competent authority". This term is defined by reference to the devolved competence of the constituent nation concerned. Maintaining this flexible terminology will ensure that the current established practices in terms of responsibility for various decisions may be continued after EU Exit; this will help secure a smooth transition to a domestic State aid regime, and maximise continuity. One function in the Agricultural De Minimis is conferred on the Secretary of State.

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 the power in paragraph 21 (b) of Schedule 7 to the EU (Withdrawal) Act 2018, to re-state retained EU law in a clearer or more accessible way. 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 No consolidation exercise was conducted as this instrument makes technical amendments whose purpose is to maintain continuity of approach in the context of the UK leaving the EU; it does not make any substantive policy changes.

10. Consultation outcome

10.1 No consultation was necessary as the instrument makes technical changes to references rather than a substantial policy change.

11. Guidance

11.1 The Department for Business, Energy and Industrial Strategy (BEIS) will issue guidance in relation to the State Aid Framework SI, which provides the framework for this instrument. The Department for Environment, Food and Rural Affairs is not producing any specific guidance, at this time, on this instrument, as it only amends deficiencies in retained EU Regulations arising from the UK's departure from the EU.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies. This instrument simply rolls over the EU legislative regime governing state aid and corrects deficiencies in retained EU law to ensure operability in a domestic setting while maintaining the same State aid regulatory standards.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there is expected to be minimal impact on business.

13. Regulating small business

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

13.2 To minimise the impact of the requirements on small businesses, the approach taken is to roll over the existing State aid regime. This includes exemptions for funding that can help small agricultural and fisheries businesses.

14. Monitoring & review

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

15. Contact

15.1 Emma Scrivener at the Department for Environment, Food and Rural Affairs, Telephone: 02080267069 or email: Emma.Scrivener@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Andrew Robinson, Deputy Director for Agricultural Transition at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

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

"In my view the State Aid (Agriculture and Fisheries) (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate". This is the case because: this instrument corrects deficiencies to ensure that the State aid regime, for agriculture and fisheries, is operable after the UK's withdrawal from the EU.

2. Good reasons

2.1 The Parliamentary Under Secretary of State for Food and Animal Welfare, David Rutley, 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". These are that: without this instrument, the current agricultural and fisheries exemptions from the EU State aid regime would not be operable the UK's withdrawal from the EU.

3. Equalities

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

"In relation to the instrument, I, David Rutley, 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.