

**EXPLANATORY MEMORANDUM TO**  
**THE AGRICULTURE (PAYMENTS) (AMENDMENT, ETC) (EU EXIT)**  
**REGULATIONS 2020**

**2020 No. [XXXX]**

**1. Introduction**

- 1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Command of Her Majesty.
- 1.2 This Explanatory Memorandum contains information for the Joint Committee on Statutory Instruments (“JCSI”).

**2. Purpose of the instrument**

- 2.1 The European Union (Withdrawal) Act 2018 (“the Withdrawal Act”) converts and preserves EU law at the end of the transition period between the UK and the EU into domestic law (“retained EU law”). If retained EU law relating to the Common Agricultural Policy (“CAP”) was not amended, it would contain inoperable rules that would prevent the UK government and the Devolved Administrations from being able to deliver agricultural and market support schemes currently run under the CAP to the agricultural sector. This instrument uses powers in the Withdrawal Act to correct these deficiencies. The EU Exit SIs being amended would not have the right effect as they would not reflect the change in the legislative position following the Withdrawal Agreement between the UK and the EU, the Direct Payments to Farmers (Legislative Continuity) Act 2020 and amendments which have been made to EU Regulations since the EU Exit SIs were made. In relation to public intervention and private storage aid, the amendments made by the EU Exit SIs would have the wrong effect operationally if not amended.
- 2.2 This instrument makes a number of changes:
- Firstly, this instrument makes provision to clarify the position of certain EU Regulations which were incorporated into domestic law with effect from exit day insofar as relating to direct payments and incorporated with effect from the end of the transition period (“IP completion day”) for remaining purposes, and amends or revokes a number of earlier EU Exit SIs detailed at 2.3, to reflect that those SIs will not apply in relation to direct payments following the withdrawal agreement and the Direct Payments to Farmers (Legislative Continuity) Act 2020 and regulations made under it.
  - Secondly, this instrument makes some limited amendments to previous EU Exit SIs where retained EU law is affected by the Northern Ireland Protocol.
  - Thirdly, this instrument makes amendments to previous EU Exit SIs to ensure UK paying agencies are able to continue complying with EU rules for the purposes of Article 138 of the Withdrawal Agreement (see section 7.8 of this document).
  - Fourthly, this instrument amends previous rural development EU Exit SIs, which were made before a Withdrawal Agreement was signed between the UK and the EU, and which now consequently need to be updated to reflect the

new position; a small number of additional amendments are made in order to ensure rural development rules continue to function effectively at the end of the transition period.

- Fifthly, this instrument makes amendments to earlier EU Exit SIs that set rules for Public Intervention (“PI”) and Private Storage Aid (“PSA”) schemes set out in the Common Organisation of Agricultural Markets (“CMO”) regime. These amendments will ensure provisions relating to the setting of prices for the intervention tendering process can be run administratively, which is in keeping with domestic processes and will allow relevant authorities to mirror the current system of administering PI and PSA as closely as possible at the end of the transition period, to ensure producers and operators do not experience any change in how the schemes are run immediately after the end of the transition period.
- Sixthly, this instrument makes a small number of minor drafting amendments to update drafting and correct errors and oversights in earlier EU Exit SIs, for example missed cross-references that needed amending and substituting a reference to Pounds Sterling for a reference to Euro.
- Seventhly, this instrument amends retained EU law concerning producer groups, producer organisations, notifications in the fruit and vegetables and processed fruit and vegetables sectors, and notifications of agricultural market information to domestic authorities. These amendments should be read in conjunction with The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment Etc.) (EU Exit) Regulations 2020 which also make operability corrections to Commission Delegated Regulation (EU) No 2017/891 and Commission Implementing Regulation (EU) No 2017/892.

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

- the Common Agricultural Policy (Financing, Management and Monitoring) (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/763);
- the Common Agricultural Policy (Financing, Management and Monitoring Supplementary Provisions) (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/765);
- the Agriculture (Legislative Functions) (EU Exit) Regulations 2019 (S.I. 2019/748);
- the Common Agricultural Policy and Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/1405);
- the Common Agricultural Policy and Agriculture and Horticulture Development Board (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/733);
- the Rural Development (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/764);
- the Rural Development (Rules and Decisions) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/770);
- the European Structural Investment Funds (Common Provisions) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/785);

- the Market Measures Payment Schemes (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/823);
- the Agriculture (Legislative Functions) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/831);
- the Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/1402);
- the Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments etc.) (EU Exit) (No.2) Regulations 2019 (S.I. 2019/1422);
- Commission Implementing Regulation (EU) No 543/2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors;
- Commission Delegated Regulation (EU) 2017/891 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the fruit and vegetables and processed fruit and vegetables sectors and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to penalties to be applied in those sectors and amending Commission Implementing Regulation (EU) No 543/2011;
- Commission Implementing Regulation (EU) 2017/892 concerning producer groups, producer organisations and notifications in the fruit and vegetables and processed fruit and vegetables sectors; and
- Commission Implementing Regulation (EU) 2017/1185 relating to notifications of agricultural market information to domestic authorities.

2.4 The EU Exit SIs revoked by this instrument are:

- the Common Agricultural Policy (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/207);
- the Common Agricultural Policy (Rules for Direct Payments) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/208);
- regulation 2 of the Common Agricultural Policy and Market Measures (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/812); and
- part 4 of the Food and Farming (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/759).

***Explanations***

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

- 2.5 The regulations amended by this instrument concern the following policy areas: CAP financing, management and monitoring; direct payments; the CMO; and rural development. The law amended includes earlier EU Exit SIs, which were made in 2019 in preparation for leaving the EU.

*Why is it being changed?*

- 2.6 Since making those earlier EU Exit SIs, a Withdrawal Agreement between the UK and the EU has been signed. It is necessary to update some earlier EU Exit SIs, and make

further amendments to retained EU law to ensure it functions effectively at the end of the transition period.

*What will it now do?*

- 2.7 Retained EU law relating to the areas cited at 2.5 will continue to function at the end of the transition period in a similar way to how it did previously. This instrument removes redundant provisions relating to EU law, enables the UK to stand by commitments it has made in the Withdrawal Agreement, changes the identity of the bodies carrying out the specified functions and converts EU procedures to UK procedures, as appropriate, and corrects a small number of errors. A full explanation of the changes being made by this instrument can be found in section 7 of this Explanatory Memorandum.

### **3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This instrument includes provisions previously laid before the JCSI and Parliament as an urgent “made affirmative” instrument, the Common Agricultural Policy (Market Measures, Notifications and Direct Payments) (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/1344). That instrument was made by the then-Minister of State for Agriculture, Fisheries and Food, the Rt Hon George Eustice MP, on 14 October 2019, and laid on the same day. However, that instrument required approval by resolution of each House of Parliament within twenty-eight days beginning with the day on which the Regulations were made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days. The instrument was debated and approved by a House of Commons delegated legislation committee, but was not debated by the House of Lords within the requisite 28 day period, and in consequence those provisions needed to be re-made. This instrument also includes amendments which correct errors in earlier EU Exit SIs (in 2019/764, 2019/823, 2019/831, 2019/1402, 2019/1422) and this instrument is being published under the free issue procedure.

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

- 3.2 This instrument is subject to the affirmative resolution procedure. The territorial application of this instrument is the UK.
- 3.3 The powers under which this instrument is made to cover the entire UK (see section 24 of the Withdrawal Act) 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 extent and territorial application of this instrument is the United Kingdom, except for regulation 11 of this instrument. The amendments made by regulations 11 of this instrument have the same extent and application as the provisions amended.

### **5. European Convention on Human Rights**

- 5.1 The Parliamentary Under Secretary of State for Farming, Fisheries and Food, Victoria Prentis MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

## **6. Legislative Context**

- 6.1 The Direct Payments to Farmers (Legislative Continuity) Act 2020 incorporated legislation governing the 2020 CAP direct payment schemes into UK law and section 6(1) contains power to make consequential amendments. This instrument relies on that power to make provision about how horizontal legislation applying to both direct payments and rural development and common organisation of the markets provisions will apply.
- 6.2 The Withdrawal Act incorporates EU law as it stands at the end of the transition period into UK law. Section 8(1) of the Withdrawal Act provides that a Minister of the Crown may, by regulations, make such provision as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the United Kingdom from the EU. This includes both UK law and directly applicable EU law. These Regulations amend common agricultural policy legislation in respect of rural development and common market organisation measures. Under Article 138 of the Withdrawal Agreement, rural development programmes and some CMO measures continue to be governed by directly applicable EU law after IP completion day until the end of the programme. Clause 18 of the Agriculture Bill makes provision to ensure that, notwithstanding the effect of Article 138, all legislation relating to these measures becomes retained EU law on IP completion day. These Regulations will not be made until after the Agriculture Bill receives Royal Assent.
- 6.3 This instrument is accordingly being made to correct relevant legislation to ensure it operates effectively at the end of the transition period. It relies upon those correcting powers to, among other things, amend EU law relating to horizontal provisions to reflect the incorporation of that legislation on exit day in relation to direct payments, implement provisions of the Withdrawal Agreement, allow functions exercisable by the Commission to be exercisable instead by UK bodies, and create legislative regimes for the UK relating to fruit and vegetable producer organisations that will respect the UK devolution settlements, as these are aspects of the law that will otherwise not operate effectively at the end of the transition period.
- 6.4 The key legislative context for this instrument is set out at section 2, paragraphs 2 to 7.
- 6.5 The EU Exit SIs listed at section 2.3 amend retained EU law relating to:
- CAP financing, management and monitoring;
  - direct payments;
  - the CMO;
  - rural development.
- to ensure this legislation continues to work effectively at the end of the transition period.
- 6.6 In most instances, where provisions are devolved, legislation-making powers will be conferred on the relevant Ministers or department of the constituent nations, in some cases allowing the Secretary of State to act on behalf of: Scottish Ministers; Welsh Ministers; or the Department of Agriculture, Environment and Rural Affairs (“DAERA”) for Northern Ireland, 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. The ability of the Secretary of State to act with the consent of Ministers does not apply to Wales in certain cases. This is because, in those cases, allowing the Secretary of State to act on behalf of Wales would have implications in relation to devolved competence for Wales, due to certain provisions in the Welsh devolution settlement.

- 6.7 All except one of the EU Exit SIs listed at section 2.3 were laid before Parliament in 2019 under the draft-affirmative statutory instrument resolution procedure. The exception is the Common Agricultural Policy and Market Measures (Miscellaneous Amendments) (EU Exit) Regulations 2019, which by reason of urgency were made using the made-affirmative process.

## **7. Policy background**

### *Overview*

- 7.1 The Common Agricultural Policy is the EU policy to provide financial support to farmers in Member States. There are three strands to CAP: direct payments (including the basic payments scheme), marketing measures (“CMO”), and rural development. The majority of CAP funds are allocated to direct payments, which is based on the amount of land the recipient owns. Together these three strands are managed by an overarching framework of rules, known as cross-cutting or “horizontal” legislation.
- 7.2 This instrument makes the appropriate corrections to retained EU legislation to ensure that legislation relating to all aspects of the CAP can operate effectively after the transition period. The approach when changing retained EU law has been to ensure that legislation remains as close to the current system as possible; changes are largely technical in nature.

### *What is being done and why?*

- 7.3 This instrument makes amendments and revocations to earlier EU Exit SIs, to remove rules relating to direct payments. These amendments and revocations reflect the Withdrawal Agreement between the EU and the UK, the Direct Payments to Farmers (Legislative Continuity) Act 2020, and regulations made under it.
- 7.4 The UK Government made a suite of EU Exit SIs in 2019 to ensure that when EU law was brought into domestic law at the point of EU Exit, CAP schemes (including direct payments) would be able to continue operating smoothly and without interruption, minimising disruption for farmers and land managers. However, subsequent to the making of these EU Exit SIs, the Withdrawal Agreement between the UK and the EU was agreed. Under the terms of the Withdrawal Agreement, most EU law would continue to apply in the UK during the transition period; however, Article 137 of the Withdrawal Agreement stipulated EU Direct Payments regulations did not apply in the UK for the 2020 claim year.
- 7.5 To avoid a legislative gap, Parliament passed the Direct Payments to Farmers (Legislative Continuity) Act 2020. This Act incorporated the EU Direct Payments legislation, as it stood on 31 January 2020, into UK law, and included powers to make secondary legislation that would correct that domesticated Direct Payments legislation, to make it operable once the UK had left the EU on 31 January 2020. Statutory instruments were made using these powers on 30 January 2020, the

Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/90) and the Rules for Direct Payments to Farmers (Amendment) Regulations 2020 (S.I. 2020/91).

- 7.6 Many of the amendments made by those instruments serve the same purpose as amendments made by the EU Exit SIs referenced in 7.4: for example, the Common Agricultural Policy (Financing, Management and Monitoring) (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/763) amends EU Regulation 1306/2013 with regard to all CAP schemes, while the Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020 amends EU Regulation 1306/2013 with regard only to direct payments. It is therefore necessary to either amend or revoke those earlier EU Exit SIs where they include amendments to direct payment provisions.
- 7.7 This instrument also makes amendments for the purpose of implementing aspects of the Protocol on Ireland / Northern Ireland to the Withdrawal Agreement (“the Protocol”), which forms part of the Withdrawal Agreement. This instrument will place the Protocol as it relates to aspects of EU finance, management and monitoring rules on a legal footing as required at the end of the transition period.
- 7.8 This instrument also makes amendments to implement Article 138 of the Withdrawal Agreement. Article 138 stipulates that EU law will continue to apply to some CAP rural development and CMO schemes after the end of the transition period. This might be because those schemes continue to receive EU funding after the transition period concludes or because the operational programme is due to finish at some point before the end of 2024. Article 138 does not apply to domestically funded schemes, and does not prohibit new domestically funded agricultural schemes being launched.
- 7.9 This instrument also makes amendments to rules in the CMO regulations relating to public intervention and private storage aid schemes, to ensure they are operable after the end of the transition period. The changes made by this instrument relate to the setting of prices where tendering applies so this is carried out administratively by the Appropriate Authority, rather than by regulations, allowing the whole process to be carried out administratively. These functions are:
- Setting the maximum buying-in prices for tendering;
  - Closing buying-in at a fixed price;
  - Setting an allocation coefficient;
  - Rejecting tenders;
  - Opening an automatic tendering procedure when the quantitative limits for mandatory buying in of products under PI have been reached; and
  - Opening a tendering procedure for PSA.
- 7.10 The purpose of this is so that the operation of the PI and PSA schemes in the UK is more in keeping with domestic processes, and allows the UK to mirror the current system of administering PI and PSA as closely as possible after the end of the transition period, to ensure producers and operators do not experience any change in how the schemes are run immediately after the end of the transition period. This will ensure that complex timelines behind the administering of PI/PSA continue to function immediately after the end of the transition period, including issues such as the age of products acceptable for intervention, the slaughter of live animals and the reimbursement of securities.

- 7.11 This instrument also makes a small number of minor drafting amendments to clarify the extent of certain powers transferred to the Appropriate Authority and amend errors and omissions, including:
- Quantitative limits for mandatory buying in of products under PI can be set at zero tonnes; and
  - Quantitative limits for mandatory buying in of products under PI apply to the whole of the UK.
- 7.12 This instrument also makes amendments to provisions in the CMO relating to the fruit and vegetables and processed fruit and vegetables sectors and the fruit and vegetable producer organisation aid scheme. These amendments are to be read in conjunction with amendments made by the Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment Etc.) (EU Exit) Regulations 2020. The reason for this is because the amended EU regulations contain provisions that Defra considers to fall within reserved competence and provisions that are agreed by Defra and the Devolved Administrations to fall within devolved competence. This instrument amends provisions within devolved competence, and the Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment Etc.) (EU Exit) Regulations 2020 amend provisions that Defra considers to fall within reserved competence. These amendments will only apply in respect of any new operational programmes approved after the transition period, and to other programmes once the application of Article 138(1) of the Withdrawal Agreement ends.
- 7.13 This instrument further makes a small number of minor drafting amendments to retained EU law as amended by previous EU Exit SIs. These amendments update drafting to take account of a number of amendments introduced by the EU, which will be reflected in retained EU law when it is domesticated at the end of the transition period, and which in consequence need to be addressed with operability corrections. Further amendments pick up missed cross-references that needed amending, omit references to “Member States”, make small amendments for consistency, and substitute a reference to Pounds Sterling for a reference to Euro.
- 7.14 This instrument reflects the UK devolution settlements and the status quo, whereby the relevant authorities in England, Northern Ireland, Scotland and Wales operate the CAP within their respective territories. The legislative changes introduced by this instrument will have no impact on the ground for farmers and land managers.
- 8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**
- 8.1 This instrument is being made using the powers in sections 8(1) and 8C(1) and paragraph 21 of Schedule 7 to the Withdrawal Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the EU. In accordance with the requirements of that Act, the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.
- 9. Consolidation**
- 9.1 Defra does not intend to consolidate the relevant legislation at this time.



## **10. Consultation outcome**

- 10.1 This instrument has not been subject to formal consultation because it will seek to replicate, as far as possible, the existing regulatory position on finance, control, and management of CAP schemes and on regulatory standards.
- 10.2 Defra has engaged with the Devolved Administrations on its approach to CAP legislation under the European Union (Withdrawal) Act 2018, including on this instrument, to familiarise them with the legislation ahead of laying. The Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 and the policy reflected in that instrument, has been developed in collaboration with officials in the Scottish and Welsh Devolved Administrations, and DAERA in Northern Ireland.

## **11. Guidance**

- 11.1 Defra is not producing any specific guidance on this instrument, as it only amends deficiencies in retained EU Regulations arising from the UK's withdrawal from the EU.
- 11.2 The Government has published Technical Notices and information on the <https://www.gov.uk> website to help people prepare for the end of the transition period. These provide relevant background information to the CAP related content of this instrument. They include:
- The UK Transition (see: <https://www.gov.uk/transition>);
  - Direct payments in 2021 (see: <https://www.gov.uk/government/collections/bps-2021>);
  - Receiving rural development funding (see: <https://www.gov.uk/rural-development-programme-for-england>);
  - Food and drink labelling changes from 1 January 2021 (see: <https://www.gov.uk/guidance/food-labelling-changes-after-brexite>); and
  - Preparing farming businesses for 1 January 2021 (see: <https://www.gov.uk/guidance/the-farming-sector-and-preparing-for-eu-exit>).

## **12. Impact**

- 12.1 There is no, or no significant impact on business, charities or voluntary bodies by this instrument. This is because the instrument simply allows for a continuation of current EU processes.
- 12.2 There is likely to be no, or no significant impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument as there is expected to be no significant impact on business. This is because the corrections made by this instrument relate to the maintenance of existing legislation. We are confident that the changes introduced by this instrument fall below the £5m per annum threshold for net direct costs to business. The purpose of this instrument is to maintain existing regulatory provisions and make existing CAP policy operable at the end of the transition period.

## **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**

As this instrument is made under powers in the Withdrawal Act, no review clause is required. Defra does not expect the impacts of the measure to be significant. Defra and its agencies will, however, monitor and review the impact of this instrument as part of its standard policy-making procedures, and will ensure that the provisions are adhered to.

#### **15. Contact**

- 15.1 Pamela Frost at Defra: 020 802 65991 or email: [pamela.frost@defra.gov.uk](mailto:pamela.frost@defra.gov.uk) can be contacted with any queries regarding this instrument.
- 15.2 Fiona James and Elen Shepard (job-share), Deputy Directors for CAP EU Exit Preparedness at Defra, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Victoria Prentis MP, the Parliamentary Under Secretary of State for Farming, Fisheries and Food, at Defra can confirm that this Explanatory Memorandum meets the required standard.

# Annex

## Statements under the European Union (Withdrawal) Act 2018

### Part 1

#### Table of Statements under the 2018 Act

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

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

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister’s opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument’s effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority’s response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

## **Part 2**

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

#### **1. Appropriateness statement**

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

“In my view the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 does no more than is appropriate”.

- 1.2 This is the case because the amendments made by this instrument are the minimum required to ensure that current EU regulatory standards concerning CAP schemes will continue to apply across the UK, and operate effectively after the UK leaves the 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.

#### **2. Good reasons**

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

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 2.2 These are because the changes to retained EU legislation and to existing UK legislation are necessary to ensure that the Common Agricultural Policy (“CAP”) arrangements can continue to operate seamlessly and without ambiguity at the end of the transition period. See section 7 in the main body of this Explanatory Memorandum.

#### **3. Equalities**

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

“This instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

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

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

#### **4. Explanations**

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

#### **5. Legislative sub-delegation**

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

“In my view it is appropriate to create a relevant sub-delegated power in the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020.”

- 5.2 This is appropriate because the provisions to which this applies are provisions which the Commission currently exercises through implementing or delegated acts, but which it is more appropriate, in the domestic context, to exercise administratively. These are provisions relating to the setting of prices where tendering applies so they are carried out administratively.