

EXPLANATORY MEMORANDUM TO

THE COMMON ORGANISATION OF THE MARKETS IN AGRICULTURAL PRODUCTS (FRUIT AND VEGETABLE PRODUCER ORGANISATIONS, TARIFF QUOTAS AND WINE) (AMENDMENT ETC.) REGULATIONS 2021

2021 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument fixes an error relating to the commencement of Part 4 of the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 (S.I. 2020/1445) by remaking previous amendments to the legislation concerning fruit and vegetable producer groups, fruit and vegetable producer organisations, notifications in the fruit and vegetables and processed fruit and vegetables sectors, and notifications of agricultural market information to domestic authorities, that Part 4 of that instrument purported to make. This instrument also remakes some amendments made by the Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment Etc.) (EU Exit) Regulations 2020 (S.I. 2020/1446) relating to fruit and vegetable producer organisations that did not take effect due to the commencement error in Part 4 of the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020. This instrument makes amendments relating to transnational producer organisations implementing an ongoing operational programme under the fruit and vegetable producer organisation aid scheme.
- 2.2 This instrument also amends legislation relating to trade provisions to allow for the administration of tariff quotas for imports of UK origin goods into third countries.
- 2.3 It also makes a correction to the wording in column 2 of row 1 of the table in Part 3 of Annex 9A to Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products (EUR 2013/1308) by substituting the entry in that column to make it clear which established wine designations of origin and established geographical indications that row relates to, linking them to definitions of “established protected designation of origin” and “established protected geographical indication” in Article 107(2) of that Regulation.
- 2.4 The EU regulations amended by this instrument are:
 - 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 (EUR 2011/543);
 - 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 (EUR 2017/891);

- Commission Implementing Regulation (EU) 2017/892 concerning producer groups, producer organisations and notifications in the fruit and vegetables and processed fruit and vegetables sectors (EUR 2017/892); and
- Commission Implementing Regulation (EU) 2017/1185 relating to notifications of agricultural market information to domestic authorities (EUR 2017/1185).
- Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products (EUR 1308/2013).

2.5 The EU Exit SIs revoked by this instrument are:

- Part 4 of the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 (S.I. 2020/1445).
- Regulations 5(2)(b), 5(20)(c), 5(25)(b), 6(2), 6(6) and 6(11) of the Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1446).

Explanations

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

- 2.6 The retained EU regulations amended by this instrument principally relate to Common Agricultural Policy (CAP) notifications; and the Common Organisation of Agricultural Markets (CMO) fruit and vegetable producer organisation aid scheme, setting out the rules for producer organisations in the fruit and vegetable sector.
- 2.7 The retained EU regulations in the CMO relating to trade provisions amended by this instrument set out broad provisions on import and export tariff quota administration resulting from international agreements.

Why is it being changed?

- 2.8 Without amendment, the retained EU legislation referenced above would contain inoperable rules that would prevent the UK Government and Devolved Administrations from being able to deliver market support schemes to the agricultural sector. Without the amendments, the UK Government would not be able to administer the fruit and vegetable aid scheme correctly to new programmes, including carrying out checks on producer organisations recognised in the aid scheme and paying aid to those producers.
- 2.9 Without amendment, the UK would be unable to open and administer export tariff quotas resulting from international agreements. This would prevent UK exporters from being able to benefit from preferential market access.
- 2.10 In the case of the correction of the entry in column 2 of row 1 of the table in Annex 9A to Regulation (EU) No 1308/2013, without the correction it may not be clear which established designations of origin and established geographical indications the provisions of that row regulating the interrelationship of trade marks and geographical indications on a transitional basis relate to. The correction makes it clear that the entry relates to established designations of origin and geographical indications defined in Article 107(2) of the Regulation.

- 2.11 This instrument uses powers in the Withdrawal Act to correct these deficiencies and to enable functions to be exercised by UK public authorities.

What will it now do?

- 2.12 Retained EU law relating to the areas cited at 2.6 and 2.7 will continue to function in a similar way to how it did previously. This instrument corrects or removes redundant provisions relating to EU law, changes the identity of the bodies carrying out the specified functions and converts EU procedures to UK procedures, as appropriate. 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 affirmative instruments, the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 (S.I. 2020/1445) and the Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment Etc.) (EU Exit) Regulations 2020 (S.I. 2020/1446). Those instruments were made by Victoria Prentis MP, the Parliamentary Under Secretary of State for Farming, Fisheries and Food on 7 December 2020. Due to an error in the commencement provision relating to Part 4 of the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020, there is doubt as to whether Part 4 of that instrument, purporting to amend retained EU legislation, took effect. The intention was for Part 4 amendments to come into force on IP completion day, but the commencement provision erroneously referred to another part of the instrument coming into force on IP completion day, and the remainder of the instrument (including Part 4) coming into force immediately before IP completion day. As Part 4 purported to make amendments immediately before IP completion day, to legislation that did not form part of retained EU legislation until IP completion day, there is doubt as to whether Part 4 took effect. Due to this commencement error, some amendments made in the Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment Etc.) (EU Exit) Regulations 2020 may not have taken effect, as these amendments purported to amend retained EU legislation that should have been amended by the amendments to the same retained legislation made by the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020. To put this matter beyond doubt, and ensure there is legal certainty that the retained EU legislation has been amended as intended, Part 4 of the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 and the affected amendments in the Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment Etc.) (EU Exit) Regulations 2020 have been revoked and remade in this instrument. 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 regulations 2 and 3 of this instrument. The amendments made by regulations 2 and 3 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 Common Organisation of the Markets in Agricultural Products (Fruit and Vegetable Producer Organisations, Tariff Quotas and Wine) (Amendment etc) Regulations 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 These Regulations remake amendments made by previous EU Exit SIs (Part 4 of the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 and provisions of the Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment Etc.) (EU Exit) Regulations 2020), by amending retained EU legislation relating to CMO measures relating to the fruit and vegetable producer organisations and CAP notifications.
- 6.2 These regulations also amend retained EU legislation relating to CMO measures on Protected Designations of Origin and Protected Geographical Indications and trade provisions to allow for the administration of tariff quotas for imports of UK origin goods into third countries
- 6.3 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. This instrument is accordingly being made to correct relevant legislation to ensure it operates effectively following the end of the transition period. It relies upon those correcting powers to, among other things, amend EU law to 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 Under Article 138 of the Withdrawal Agreement, some CMO measures continue to be governed by directly applicable EU law after IP completion day until the end of the programme. Section 18 of the Agriculture Act 2020 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.

- 6.5 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.

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.
- 7.2 This instrument makes the appropriate corrections to retained EU legislation to ensure that legislation relating to the CMO and certain aspects of the CAP can operate effectively following 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 remakes amendments made by Part 4 of the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 (S.I. 2020/1445) and certain provisions of the Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment Etc.) (EU Exit) Regulations 2020 (S.I. 2020/1446) relating to fruit and vegetable producer organisations.
- 7.4 The amendments made by Part 4 of the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 (S.I. 2020/1445) purported to make operability amendments to retained EU legislation relating to producer groups in the fruit and vegetable sector, fruit and vegetable producer organisations and notifications of agricultural market information to domestic authorities. Specifically, part 4 made amendments to the rules governing the Fruit and Vegetable Aid Scheme to enable aid to continue to be paid to producer organisations recognised under the Scheme, and for checks to be carried out to ensure that aid is paid correctly.
- 7.5 The amendments made to retained EU legislation relating to the fruit and vegetable producer organisations 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 (S.I. 2020/1446).
- 7.6 The amendments made by this instrument in relation to the operation of the fruit and vegetable producer organisation aid scheme (amendments to Commission Delegated Regulation (EU) 2017/891 and Commission Implementing Regulation (EU) 2017/892) 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.

- 7.7 This instrument also amends the retained EU legislation relating to transnational producer organisations implementing an ongoing operational programme under the fruit and vegetable producer organisation aid scheme in order to prevent the existing retained legislation from being operationally deficient as a result of the application of Article 138 of the Withdrawal Agreement to ongoing operational programmes. The amendments relating to transnational producer organisations provide that where organisations are implementing the remainder of an ongoing operational programme that was being implemented by that organisation immediately before IP completion day, the existing non-UK members of that organisation may continue to be considered as producer members of the organisation, and continue to benefit from public funds until the end of the implementation of that ongoing programme.
- 7.8 As this instrument remakes provisions in Part 4 of the Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 (S.I. 2020/1445), this instrument revokes Part 4. Similarly, as this instrument remakes certain provisions of the Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment Etc.) (EU Exit) Regulations 2020 (S.I. 2020/1446), the affected provisions are revoked by this instrument.
- 7.9 This instrument amends trade provisions in Articles 184 and 188 of retained Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products. Amendments have been made to ensure that the UK can open and administer export tariff quotas resulting from international agreements. In order to avoid confusion, it also removes references to the administration of import tariff quotas as these are covered by regulations made under the Taxation (Cross-Border Trade) Act 2018.
- 7.10 It also corrects an entry in column 2 of row 1 of the table in Part 3 of Annex 9A of Regulation (EU) No 1308/2013 of the European Parliament and of the Council to make it clear what established designations of origin and established geographical indications that provision relates to.

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 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 Common Organisation of the Markets in Agricultural Products (Fruit and Vegetable Producer Organisations, Tariff Quotas and Wine)(Amendment etc) Regulations 2021 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-brex-it>); 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

14.1 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 can be contacted with any queries regarding this instrument.
- 15.2 Balwinder Dhoot, Deputy Director for Farming and Food Sectors and Trade, Agri-Food Chain 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 Common Organisation of the Markets in Agricultural Products (Fruit and Vegetable Producer Organisations, Tariff Quotas and Wine)(Amendment etc) Regulations 2021 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.