

## EXPLANATORY MEMORANDUM TO

### THE AGRICULTURAL PRODUCTS, FOOD AND DRINK (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

2019 No. 1342

#### 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 memorandum contains information for the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments.

#### 2. Purpose of the instrument

- 2.1 This instrument amends retained EU food and drink legislation which includes a replacement spirit drinks regulation that partially came into application in the UK in June 2019. The provisions in this instrument largely amend rules on wine and spirit drinks, with most of them concerning geographical indication (“GI”) schemes. There are also a small number of EU Exit amendments to EU law on food and agricultural GI schemes.
- 2.2 Additionally, this instrument amends UK regulations as a consequence of the amendments to the EU regulations. The changes being made concern:
- i) Two previously laid EU Exit SIs impacted by the replacement EU Spirit Drinks Regulation.
  - ii) Tribunal procedure rules on wine and spirit GI decisions made by the Secretary of State.
  - iii) Northern Ireland legislation providing transitional recognition of natural mineral water recognised by certain other countries.

##### *What are Geographical Indications?*

- 2.3 GIs are a form of intellectual property protection for the names of food, drink and agricultural products with qualities or characteristics which are attributable to the place they are produced and/or the traditional methods by which they are made. Examples include: Scotch Whisky, English Regional Wine, Welsh Lamb and Lough Neagh Eels.
- 2.4 GI award designations include Protected Designations of Origin (“PDOs”) and Protected Geographical Indications (“PGIs”). Whilst the PGI designation means that some elements of production and/or raw materials can take place outside the defined geographical area, a PDO designation more strictly requires all aspects of production, including sourcing materials, to take place within the defined geographical area.

##### *Explanations*

##### *What did any relevant EU legislation do before exit day?*

- 2.5 Most of the EU legislation amended by this instrument is a significant part of the EU framework in place to protect GI products. This enables applications to be made to register GIs, and for regulating their presentation on the market throughout the EU.

This framework ensures all products protected by GI schemes receive legal protection from imitation or evocation in EU Member States. The GI schemes ensure all EU Member States are compliant with the GI elements of the World Trade Organization (“WTO”) Trade Related Aspects of Intellectual Property Rights (“TRIPS”) agreement obligations.

The EU legislation also provides the basis to protect certain ‘traditional terms’ that were used in the marketing of wine products. The legislation also set out rules on bodies responsible for managing or decision making on: wine movements, registrations, exemptions, certifications and documentation, and for checks on wine products.

On spirit drinks, the legislation provides the regulation of their composition and labelling. This goes beyond the GI framework and includes regulating the trade of the Japanese spirit drink *shochu* in the EU.

#### Why is it being changed?

- 2.6 This instrument is being laid to address deficiencies in retained EU legislation arising from EU Exit. It is required to enable the relevant regulations to be operable under UK law, as provided for by the European Union (Withdrawal) Act 2018. The retained direct EU and domestic legislation being amended by this instrument is set out in the legislative context section of this document.

This EU Exit SI is needed in addition to make changes to earlier EU Exit SIs covering GI scheme rules, due, in part, to the replacement of the main spirits regulation, which partially came into application in June 2019.

#### What will it now do?

##### ***Spirit drinks***

- 2.7 Most spirit drink amendments arise from the repeal and replacement of an old EU Spirit Drinks Regulation with a new Spirit Drinks Regulation published on 17 May 2019.

The new Spirit Drinks Regulation contains both GI and non-GI rules, with differing dates for when their provisions apply – the GI rules apply before exit day (from June 2019), while the non-GI rules will not apply until 2021 and so will continue to be regulated by the old EU Spirits Regulation. This instrument amends the relevant rules accordingly, to:

- i. Make operability amendments to the GI rules in the new Spirit Drinks Regulation (which have applied in the EU from 8 June 2019);
- ii. Consolidate amendments to the non-GI rules from the old EU Spirit Drinks Regulation (as the replacement provisions will not apply until 2021);
- iii. Correct amendments made by the two earlier Defra EU Exit SIs on the old EU Spirit Drinks Regulation, by revoking all relevant amendments.

These amendments, collectively, will convert the EU’s spirit drink GI scheme into a UK spirit drinks GI scheme. It will also enable appeals to be made to the First-tier Tribunal when GI scheme decisions are made under the new UK scheme. Details of these rules, and the regulations affected, are set out in section 7 of this explanatory memorandum.

This instrument will also revoke a recent EU regulation concerning trade in a Japanese spirit drink (*shochu*) within the EU market. The need for the revocation of

this regulation is due the relevant EU-Japan Economic Partnership Agreement not being transitioned to the UK upon EU Exit.

### ***Wines***

2.8 The majority of wine rules in this instrument are technical operability amendments to EU wine regulations, so that those regulations can function as UK law. The rules concern:

#### i. GI amendments:

A range of operability amendments are made, which include:

- Changes to the application for protection, amendments, objections and cancellations of GIs and traditional terms.
- Converting the EU GI scheme for wines into a UK scheme.
- Condensing the current two stage Member State/European Commission process into a single UK process, supplementing amendments made by earlier Defra instruments (as set out in sections 6 and 7 of this explanatory memorandum).
- Changes to domestic rules on tribunal procedures across a range of decisions relating to wine traditional terms. This requires appeals against wine traditional terms decisions to be brought within 28 days, which mirrors amendments to tribunal procedure rules made by the agri-food GI scheme through an earlier instrument.

#### ii. Non-GI amendments:

These reflect the application of wider EU CAP (Common Agricultural Policy) legislation. The amendments include:

- Scope to define the bodies who can make certain operational decisions concerning wine sector rules.
- Exemptions to the rules applying to obligations on accompanying documents for wine sector movements.
- Rules on use of certain labelling terms on wines that are not PDO nor PGI, i.e. for certification and marketing purposes.
- Rules on the use of registers maintained by wine operators.
- Extending trials on experimental use of new winemaking practices and processes.

### ***Agri-foods***

2.9 This instrument removes the obligation on UK producers that would otherwise apply after EU Exit, to use the EU GI logos to indicate the GI protection of their products in the UK. A subsequent instrument will introduce new UK GI logos.

### ***Northern Ireland specific rules***

2.10 This instrument:

- i. Inserts a transitional rule in the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2015. This will enable products recognised as natural mineral waters before EU Exit by other EU countries, as well as Norway and Iceland, to be sold in Northern Ireland as natural mineral water after EU Exit. This provision rule is further explained in the policy background at 7.11.

- ii. Amends a previously-laid Defra EU Exit SI by changing the reference to the Northern Ireland Department that will be able to use powers in existing domestic legislation for purposes connected to two EU wine regulations. In summary, it will ensure that after EU Exit, the Northern Ireland Department of Health may use the same powers for those purposes. This rule is further explained in the policy background in section 7.12.

#### *Additional correction*

- 2.11 This instrument also corrects minor errors in a previously-laid Defra EU Exit SI amending an EU regulation on the provision of food information to consumers.

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

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

- 3.1 This is an urgent procedure instrument being laid under Schedule 7(5) of the European Union (Withdrawal) Act 2018 (EUWA). Part 2 of Annex 1 of this Explanatory Memorandum contains further details on the reasoning behind this.

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

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

### **4. Extent and Territorial Application**

- 4.1 Except in relation to regulation 3, the territorial extent of this instrument is the United Kingdom. The territorial extent of regulation 3 is Northern Ireland.
- 4.2 Except in relation to regulation 3, the territorial application of this instrument is the United Kingdom. The territorial application of regulation 3 is Northern Ireland.

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

- 5.1 The Minister of State for International Environment and Animal Welfare at Defra, Zac Goldsmith MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

### **6. Legislative Context**

- 6.1 This instrument is made in exercise of powers given by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018. Section 8(1) of the European Union (Withdrawal) Act 2018 provides that a Minister of the Crown may by regulations make such provisions 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 UK from the EU.
- 6.2 The retained direct EU legislation being amended by this instrument is as follows, with full regulation names set out in Annex 2:
  - i. Regulation (EC) No 110/2008 of the European Parliament and of the Council.

- ii. Commission Regulation (EC) No 606/2009.
  - iii. Commission Delegated Regulation (EU) No 664/2014.
  - iv. Commission Implementing Regulation (EU) No 668/2014.
  - v. Commission Delegated Regulation (EU) 2018/273.
  - vi. Commission Implementing Regulation (EU) 2018/274.
  - vii. Regulation (EU) 2018/1670 of the European Parliament and of the Council.
  - viii. Commission Delegated Regulation (EU) 2019/33.
  - ix. Commission Implementing Regulation (EU) 2019/34.
  - x. Regulation (EU) 2019/787 of the European Parliament and of the Council.
- 6.3 This instrument also makes consequential amendments to UK legislation. This includes: tribunal procedure rules allowing certain GI decisions to be appealed; inserting a transitional provision in domestic Northern Irish regulations on natural mineral water; and amending previously made EU Exit SIs. The latter serves either to take into account new EU regulations that will apply before EU Exit, or to make minor corrections to the wording of previously laid instruments.
- 6.4 The domestic secondary legislation being amended are:
- i. The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (S.I. 2009/1976);
  - ii. The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2015 (S.R. 2015 No 365);
  - iii. The Food and Farming (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/759);
  - iv. The Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/778)
- 6.5 The regulations listed in this section are referred to in subsequent sections primarily by their code numbers.

## 7. Policy background

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

#### Spirit drinks

- 7.1 The amendments being made by this instrument will ensure that the labelling and composition of spirit drinks will be regulated in the UK in much the same way as they are regulated now. It also ensures that there will be an operable UK GI scheme for spirit drinks. More specifically:
- i. The amendments in regulation 15 concern the replacement EU Spirit Drink Regulation, published on 17 May 2019, which applies in part from 8 June 2019 (Regulation (EU) 2019/787, replacing Regulation (EC) 110/2008). The amendments convert the EU GI scheme for spirit drinks into a UK scheme; with decisions on applications being taken by the Secretary of State and the scheme being reduced from a two-stage Member State/European Commission process into a single UK process. This covers the making and scrutiny of GI applications, the opposition procedure (form of consultation), the making of decisions and the making of amendments and cancellations. It also includes the creation and maintenance of a UK spirit drinks GI register. In addition, a provision is made for

- appeals to be made against GI decisions taken by the Secretary of State (see section 7.3).
- ii. The EU power to include third-country GIs on the spirit drinks register will be amended so that spirit drinks which the UK agrees to protect through international trade agreements can be listed on the UK's register. This will include third country spirit drinks protected under agreements between the UK and third countries replacing, on a continuity basis, the international agreements that currently apply between the EU and the third country.
- 7.2 This instrument amends two Defra EU Exit SIs made in the spring of 2019, S.I. 2019/759 and S.I. 2019/778, by revoking the EU Exit amendments for Regulation (EC) 110/2008. Some of the provisions are no longer needed, due to the replacement of the relevant provisions by Regulation (EU) 2019/787, and others are replaced, with amendments, in regulation 6 of this instrument. It was considered more helpful to the reader of the legislation that the remaining amendments be brought together into one place in this instrument, rather than to use this instrument to make substantial amendments to earlier EU Exit SIs. It also omits an amendment made to Commission Implementing Regulation (EU) No 716/2013 that was based on spirit drink GI provisions in Regulation (EC) 110/2008 that is no longer appropriate following the replacement of the GI provisions by Regulation (EU) 2019/787 and corrects other minor errors in those earlier EU Exit SIs.
- 7.3 This instrument also amends domestic rules on tribunal procedures (as carried by S.I. 2009/1976) in relation to GI spirit drinks decisions, providing for such appeals to be brought within 28 days. The decisions include the approval, amendment and cancellation of a spirit drink GIs. Similar provisions are made in this instrument for to wine traditional terms and have already been made for the other UK replacement GI schemes via earlier instruments.
- 7.4 Additionally, this instrument revokes Regulation (EU) 2018/1670 which makes special provision on the trade of Japanese spirit drink *shochu*. Via the EU-Japan Economic Partnership Agreement, this had allowed *shochu* to be sold in the EU in different bottle sizes. However this Agreement is not due to be transitioned to the UK on EU Exit.

### Wines

- 7.5 The amendments for wine made by this instrument fall into two categories. The first covers amendments to GI provisions. The second covers amendments for non-GI provisions, for example certifying the use of marketing terms and the registers to be kept by wine operators. Amendments to the GI provisions are explained in sections 7.6 and 7.7, whilst the non-GI provisions are set out in sections 7.8 and 7.9.
- 7.6 The majority of amendments in this instrument convert the EU GI scheme for wine GIs into a UK scheme. The amendments are technical operability amendments so that the EU wine regulations can function as UK law, with the Secretary of State taking on decisions previously taken by the European Commission and the two-stage Member State/European Commission processes being reduced into a single-stage UK process. This is done by amending EU Regulations 2019/33 and 2019/34. More specifically:
- i. Amendments to Commission Delegated Regulation (EU) 2019/33 concern the:
    - Admissibility of PDO and PGI applications and objections;
    - Restrictions on the use of PDOs and PGIs;

- Product specifications for PDOs and PGIs and the procedure for making such amendments, including the admissibility of amendment applications and the procedure for standard amendments and temporary amendments;
  - Procedure for the cancellation of PDOs and PGIs, including the admissibility of cancellation requests;
  - Scrutiny provisions that apply to traditional terms and the modification and cancellation of traditional terms; and
  - New provisions enabling appeals to be made to the First-tier Tribunal on decisions to grant an application, protect a traditional term, or to amend or cancel a traditional term (also see section 7.7).
- ii. Amendments to EU Commission Implementing Regulation (EU) 2019/34 concern:
- The scrutiny procedure for PDO and PGI applications;
  - Operability amendments on logo provisions;
  - Provision on the verification of compliance with a PDO or PGI product specification and the omission of a provision on enforcement of PDO and PGI rules (the enforcement provisions in The Wine Regulations 2011 will apply);
  - Provisions enabling traditional terms protected under a UK/third country continuity trade agreement to be added to the new UK register of protected traditional terms to enable the UK to give effect to its international obligations on traditional terms protected under such an agreement; and
  - Minor changes to the Annex III notification form to be submitted at the end of a consultation following an objection procedure.
- 7.7 In addition, this instrument amends UK rules on tribunal procedures on GI decisions for wine traditional terms, imposing a 28-day time limit for the making of appeals. These decisions include the approval, amendment and cancellation of traditional terms. It requires appeals against the decisions to be brought within 28 days, which mirrors amendments to tribunal procedure rules made by the agri-food GI scheme through an earlier instrument (S.I 2019/895).
- 7.8 The non-GI wine amendments allow the EU Regulations to work in the UK after EU Exit. Specifically, EU Regulations which cover the movement of wines, the documents that must accompany them and the keeping of registers. These supplement the rules in the overarching Regulation (EU) No 1308/2013 of the European Parliament and of the Council (establishing a common organisation of the markets in agricultural products). These primarily:
- i. Amend exemptions from the rules on documents that must accompany wine movements (by amending Regulation (EU) 2018/273);
  - ii. Make operability amendments on non-PGI and non-PDO wines (by amending Regulation (EU) 2018/274) including:
    - Clarifying who the competent authority is, by reference to existing provisions in the domestic Wine Regulations 2011;
    - Rules on the marketing and certification of non-PDO and non-PGI wine products that display the vintage and/or a varietal indication on the label; and
    - On the form, content and closure of the registers that need to be completed by wine operators.
- 7.9 Additionally, this instrument makes minor amendments to Regulation (EC) 606/2009 to set out arrangements for extending experimental trials on new winemaking

practices and processes, and provides scope to introduce detailed rules on the disposal of the by-products from winemaking should this be deemed necessary.

#### Agri-Foods

- 7.10 Regulations 8 and 9 of this instrument revoke, from exit day, provisions in Regulations (EU) 664/2014 and (EU) 668/2014 which require the EU GI logos to be used on agri-food products. A further instrument will be made later in 2019 to put in place new UK GI logos.

#### Northern Ireland-specific provisions

- 7.11 This instrument inserts a transitional provision in the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2015, to allow bottled water recognised by the EU 27 Member States, as well as Iceland and Norway, before exit day to be sold in Northern Ireland using that description during a transitional period. It also makes provision, subject to certain conditions, for the transitional provision to be brought to an end by the service of a notice by the Northern Ireland Department of Health.
- 7.12 The instrument amends earlier Defra EU Exit SI 2019/759 (which had amended retained Regulation (EU) 2019/33) by changing the reference to the Northern Ireland Department able to use powers in existing domestic legislation. It concerns the two EU wine regulations that are being amended by regulation 4(3) and (4) of this instrument. For example, it will mean that the Northern Ireland Department of Health will be able to make regulations under the existing powers in the Food Safety (Northern Ireland) Order 1991 to allow wine products that do not comply with the provisions in the EU Regulation relating to wine-making practices to be used for other purposes instead of being destroyed. Similarly, it will also mean that the Northern Ireland Department will be able to make regulations to make it compulsory for additional particulars not required by the EU Regulations to be included on the labels of certain wines produced in their territory. In summary, it will ensure that, after EU Exit, the Northern Ireland Department of Health may use the same powers.

#### Additional correction

- 7.13 This instrument also corrects minor errors in a Defra EU Exit SI (2019/778) concerning operability amendments to Regulation (EU) No 1169/2011 on the provision of food information to consumers.

### **8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument is being made using the power in section 8 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. This instrument is also made under the powers in 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 1 to this explanatory memorandum.

### **9. Consolidation**

- 9.1 This instrument consolidates some of the amendments made to Spirit Drinks Regulation (EC) No 110/2008 that were made in previous EU Exit SIs (2019/759 and



2019/778). This follows the coming into force of some provisions in the new EU Spirit Drinks Regulation (Regulation (EU) 2019/787) which was published in the EU's Official Journal on 17 May 2019. Some of the amendments that had been made to Regulation (EC) 110/2008 are no longer relevant because the provisions to which they relate have been repealed by Regulation (EU) 2019/787. The relevant exit amendments needed to be revoked. It was decided that it would be more helpful to the reader to revoke all the Regulation (EC) 110/2008 amendments in the two earlier EU Exit SIs and bring together all of the amendments which are still required in regulation 6 of this instrument, adjusted as appropriate for Regulation (EC) 110/2008.

## **10. Consultation**

- 10.1 A public consultation on the establishing UK GI schemes after EU Exit took place in Autumn 2018, see: <https://consult.defra.gov.uk/food/consultation-on-uk-geographical-indications-scheme/>. This consultation sought views on various elements of new UK GI schemes, which have been carried forward across several statutory instruments, including this instrument.
- 10.2 Most directly applicable to this instrument was a question on the system for handling appeals against GI decisions made by the Secretary of State. The majority of responses to that question supported our proposals for appeals to go via a First-tier Tribunal, which has been carried through in this statutory instrument for the wines and spirits GI regulations.
- 10.3 The full consultation summary and response was published on 25 January 2019, which can be found at: <https://www.gov.uk/government/consultations/geographical-indications-gi-creating-uk-schemes-after-eu-exit>
- 10.4 Additionally, the Northern Ireland natural mineral water transitional provision (see section 7.11) was subject to a four-week public consultation conducted in Northern Ireland, which closed on 20 December 2018. The consultation sought comments on the proposed approach to the amendment of domestic legislation in Northern Ireland relating to food and feed safety and hygiene, food compositional standards and food labelling. One response was received on this proposed approach. This supported the rolling over of recognition of existing EU natural mineral waters because it was considered the least disruptive and burdensome option, as it will require no changes to the current practices.
- 10.5 The consultation and summary of responses are published at the following link: <https://www.food.gov.uk/news-alerts/consultations/proposed-approach-for-the-amendment-of-domestic-legislation-in-northern-ireland>.
- 10.6 The provisions in this instrument not covered by these consultations, or subject to consultation, are:
  - i. Technical updates, e.g. the amendments required by the EU replacement spirit drinks regulation published in May;
  - ii. Minor operability amendments so the rules correctly function in UK law, e.g. removing the requirement for UK products to display the EU GI logo; or
  - iii. Consequential corrections or amendments to relevant domestic regulations.

## **11. Guidance**

- 11.1 The UK will be publishing guidance on the UK GI schemes, for example how to apply for, amend or cancel a GI award. This will be publicly available on GOV.UK on

the day that the schemes enter into force, e.g. on exit day if a withdrawal agreement with the EU has not been agreed by that date and no further extension is agreed.

## **12. Impact**

- 12.1 There is no significant impact on business, charities or voluntary bodies. Legislative and decision making powers will be transferred from the Commission to appropriate UK public authorities.
- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this statutory instrument as its purpose is to maintain existing regulatory standards and so 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 (employing up to 50 people). However this legislation places no additional burdens upon them, so no specific action is proposed to minimise regulatory burdens on small businesses.

## **14. Monitoring & review**

- 14.1 As this statutory instrument is made under the powers in the European Union (Withdrawal) Act 2018, no review clause is required. Defra will however monitor and review the impact of the instruments as part of its standard policy-making procedures, and will ensure that the provisions are adhered to.

## **15. Contact**

- 15.1 Alex McKenna, Geographical Indications EU Exit Team Leader, at the Department for Environment, Food and Rural Affairs, telephone: 020 8026 8869 or email: Alex.McKenna@defra.gov.uk can be contacted with any queries regarding the statutory instrument.
- 15.2 Ananda Guha, Deputy Director, Exports and EU Exit, Agri-Food Chain Directorate at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Zac Goldsmith MP, Minister of State for International Environment and Animal Welfare, at the Department for Environment, Food and Rural Affairs, 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
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 procedure SI.	Explain why the SI should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees.
Appropriateness	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 SI 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 Equality 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 2018 SIs.	Explain the SI, identify the relevant law before exit day, explain the SI's effect on retained EU law and give information about the purpose of the SI, 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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		powers in Schedule 2 to create a criminal offence.	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by SI.	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 s. 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 1972.	Statement explaining the good reasons for modifying the SI made under s. 2(2) ECA 1972, identifying the relevant law before exit day, and explaining the SI's effect on retained EU law.
Scrutiny statement where amending regulations under s. 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 1972.	Statement setting out: a) the steps which the relevant authority has taken to make the draft SI 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 SI, and (ii) any other representations made to the relevant authority about the published draft SI, and c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the SI or draft SI 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 Minister of State for International Environment and Animal Welfare at the Department for Environment, Food and Rural Affairs, Zac Goldsmith MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate”.

- 1.2 This is the case because the amendments made by the instrument are the minimum required to ensure that existing domestic legislation remains operable after the United Kingdom (“UK”) leaves the European Union (“EU”). The amendments are predominantly technical in nature and do no more than is strictly necessary to ensure that UK law continues to function effectively. See section 7, sub-paragraphs 1 to 13 of this explanatory memorandum.

#### 2. Good reasons

- 2.1 Minister of State for International Environment and Animal Welfare, at the Department for Environment, Food and Rural Affairs, Zac Goldsmith 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: that without this instrument, the EU Regulations and domestic Regulations in section 6 of this explanatory memorandum, which are converted into UK law by the European Union (Withdrawal) Act 2018, will not work properly, and that it is appropriate, after EU Exit, for UK public authorities to exercise the legislative functions within this instrument that are currently carried out by the Commission.

#### 3. Equalities

- 3.1 Minister of State for International Environment and Animal Welfare, at the Department for Environment, Food and Rural Affairs, Zac Goldsmith MP, has made the following statement(s):

“The draft 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 Minister of State for International Environment and Animal Welfare, Zac Goldsmith 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, Zac Goldsmith 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 Minister of State for International Environment and Animal Welfare, at the Department for Environment, Food and Rural Affairs, Zac Goldsmith 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 relevant sub-delegated powers in The Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations 2019”

- 5.2 For geographical indications this involves replacing an existing EU process, which is exercised through delegated legislation, with a power in UK law which is exercised administratively with decisions published on a publicly accessible register. A relevant sub-delegated power is appropriate because it is desirable for the Secretary of State to exercise the power to determine applications for geographical indications relating to spirit drinks and wine traditional terms by administrative means rather than by statutory instrument given that:

- i. there may be a large volume of such decisions depending on the number of applications which are made, and a requirement for all such decisions to be made by statutory instrument would require additional resources and could cause delay in ensuring that decisions are made and come into force promptly;
- ii. scrutiny and awareness of the decisions made by the Secretary of State will be sufficiently provided through the requirement for decisions to be published on a register.

#### **6. Urgency**

- 6.1 Minister of State for International Environment and Animal Welfare at the Department for Environment, Food and Rural Affairs, Zac Goldsmith MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view by reason of urgency, it is necessary to make The Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2019, without a draft of the instrument containing the regulations being laid before, and approved by a resolution of, each House of Parliament.”

- 6.2 This is because: the amendments described in Section 2 need to be in place on the day of EU Exit, otherwise the respective legislation would not be fully operable and would be consistent with government policy.

# **Annex 2**

## **EU legislation amended by this instrument**

Further to the summary list at 6.2, the full titles of the retained direct EU legislation being amended by this instrument are:

- i. Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89.
- ii. Commission Regulation (EC) No 606/2009 laying down certain detailed rules for implementing Council Regulation (EC) No 479/2008 as regards the categories of grapevine products, oenological practices and the applicable restrictions.
- iii. Commission Delegated Regulation (EU) No 664/2014 supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council with regard to the establishment of the Union symbols for protected designations of origin, protected geographical indications and traditional specialities guaranteed and with regard to certain rules on sourcing, certain procedural rules and certain additional transitional rules.
- iv. Commission Implementing Regulation (EU) No 668/2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs.
- v. Commission Delegated Regulation (EU) 2018/273 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the scheme of authorisations for vine plantings, the vineyard register, accompanying documents and certification, the inward and outward register, compulsory declarations, notifications and publication of notified information, and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards the relevant checks and penalties, amending Commission Regulations (EC) No 555/2008, (EC) No 606/2009 and (EC) No 607/2009 and repealing Commission Regulation (EC) No 436/2009 and Commission Delegated Regulation (EU) 2015/560.
- vi. Commission Implementing Regulation (EU) 2018/274 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the scheme of authorisations for vine plantings, certification, the inward and outward register, compulsory declarations and notifications, and of Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards the relevant checks, and repealing Commission Implementing Regulation (EU) 2015/561.
- vii. Regulation (EU) 2018/1670 of the European Parliament and of the Council
- viii. Commission Delegated Regulation (EU) 2019/33 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation.

- ix. Commission Implementing Regulation (EU) 2019/34 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, amendments to product specifications, the register of protected names, cancellation of protection and use of symbols, and of Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards an appropriate system of checks.
- x. Regulation (EU) 2019/787 of the European Parliament and of the Council on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008.