

EXPLANATORY MEMORANDUM TO
THE FOOD AND DRINK (AMENDMENT) (EU EXIT) REGULATIONS 2019
[2019] No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared the Department for Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Act.

2. Purpose of the instrument

Explanations

What did any relevant EU law do before exit day?

- 2.1 These regulations primarily amend wine legislation but also make minor operational amendments to food information rules.
- 2.2 Wine is a highly regulated area of EU agriculture. The Commission has introduced specific acts to cover the production, trade and movement of wine sector products, including rules regarding the documents and certificates that must accompany movements of those products.
- 2.3 Rules also extend to the records that have to be maintained regarding the production processes used and trade in wine sector products; declarations that have to be made and the official bodies who are responsible for checks and controls. As these regulations concern the certification and movement of excisable produce, documentation requirements for trade in wines within the EU are closely linked to single market customs measures (e.g. EMCS). Similar changes are being made to reflect UK as opposed to EU legislation with regard to food produce.

Why is it being changed?

- 2.4 Rules need to be changed as they will not operate correctly when the UK leaves the EU and this could have a severe impact on the trade and production of wine sector and food products. Importantly once the UK leaves the single customs union, HMRC will be introducing new excise movement and control arrangements. Certain changes will be necessary to ensure existing rules on the movement and control of wine and foods align with those new customs arrangements.

What will it now do?

- 2.5 This legislation will make necessary changes to EU regulations to ensure that laws in this area will remain operable after the UK leaves the EU.
- 2.6 It will make various changes to ensure that provisions concerning the trade in wines, monitoring production and maintaining records will operate correctly after EU Exit. It will ensure that the responsibilities for monitoring and controls are re-allocated appropriately taking into account the UK’s transition from being a singular Member State to being UK devolved governments.

- 2.7 It will also set out various changes that will reflect the interdependencies with other legislation, primarily that made by HMRC to ensure that transition from Single Customs Union controls to UK specific customs controls operate correctly.
- 2.8 The UK is an important global importer and trader in wine products. We also have a growing and highly acclaimed wine production industry. Assurance is a vital underpinning for wine production, trade and the consumer market and availability of detailed information on shipments helps underpin that assurance. Similarly the official bodies that are responsible for controls in the sector will have the information they need to carry out an effective level of enforcement of those rules.

3. Matters of special interest to Parliament

- 3.1 This instrument is being laid for sifting by the Sifting Committees

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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

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

5. European Convention on Human Rights

- 5.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

- 6.1 This instrument will enable key aspects of the UK wine import and export trade, production and enforcement to function appropriately after EU Exit. It will enable this trade to function in accordance with UK excise control arrangements that will be in place after we leave the EU and will ensure that those rules can be monitored and enforced accordingly. It will also make operability changes to food information laws including the alignment of retained laws and new HMRC legislation.

7. Policy background

What is being done and why?

- 7.1 The production and movement of wine products is highly controlled in the EU with products also coming under excise control arrangements. The key aim of this regulation therefore will be to ensure that appropriate rules are in place to cover the movement and control of wine products from both a regime and excise perspective are maintained. These controls relate to documents that are to accompany wine product movements and any certification requirements.
- 7.2 It will also introduce similar changes to rules on the records and declarations that need to be maintained in relation to the production and trade of wines and set out the bodies

that are responsible for carrying out those controls and checks. Changes here will also include updating references to newly published EU legislation.

7.3 Rules have also been adapted to reflect those responsible for various activities, so that there is an appropriate transition of responsibilities from the UK being a Member State of the EU in legislative terms, to becoming a country in its own right with devolved policy oversight.

7.4 Minor changes are being made to food information laws to make this compatible with legislation that has been introduced by HMRC to replace certain other laws which will cease to operate after the UK leaves the EU.

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. 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 This instrument is not consolidating any other provisions.

10. Consultation outcome

10.1 This instrument itself was not subject to consultation because its purpose is solely to enable the current policy framework for legislative functions relating to wine policy.

10.2 However, Defra has engaged with the Devolved Administrations and stakeholder umbrella organisations.

10.3 This instrument, and the policy reflected within it, has been developed in collaboration with officials in the Scottish and Welsh Devolved Governments and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.

11. Guidance

11.1 Defra is not producing any specific guidance on this instrument, as it only makes technical amendments to deficiencies in retained EU legislation arising from the UK's withdrawal from the EU.

12. Impact

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

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

12.3 An Impact Assessment has not been prepared for this instrument because 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.

13.2 No disproportionate impacts are expected to impact small and micro businesses.

14. Monitoring & review

14.1 As this instrument is made under the powers in the European Union (Withdrawal) Act 2018, no review clause is required. Defra and its agencies 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 Philip Munday at Defra Telephone: 0208 026 3885 or email: philip.munday@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Ananda Guha, Deputy Director for Exports and EU Exit, at Defra can confirm that this Explanatory Memorandum meets the required standard.

15.3 David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare, 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 2018 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 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 instrument made under s. 2(2) ECA 1972, identifying the relevant law before exit day, and explaining the instrument’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 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. Sifting statement

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

“In my view the Food and Drink (Amendment) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because the instrument contains changes not affecting current standards or procedures and as such would normally not be expected to be debated in Parliament.

2. Appropriateness statement

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

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

- 2.2 This is the case because the instrument provides for the continued effective functioning of the policy regimes described in section 2.1 of the main body of this Explanatory Memorandum, after the UK has withdrawn from the EU.

3. Good reasons

- 3.1 David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare, 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”.

- 3.2 These are that without this instrument, certain retained EU law will not work properly, and the amendments made by this instrument will address those deficiencies.

4. Equalities

- 4.1 David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare, has made the following statement:

“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.”

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

“In relation to the draft instrument, I, David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare 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.”

5. Explanations

5.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.