

EXPLANATORY MEMORANDUM TO

THE FOOD AND DRINK (AMENDMENT) (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 Act.
- 1.2 This memorandum contains information for the Sifting Committees.

2. Purpose of the instrument

Explanations

What did any relevant EU law do before exit day?

- 2.1 These regulations make minor amendments to retained EU legislation on food information rules and wine.
- 2.2 Wine is a highly regulated area of EU agriculture. EU rules cover trade and movement of wine sector products, including rules regarding the certificates that must accompany movements of those products and exemptions to those rules. They currently apply by reference to an EU Regulation relating to single market customs measures that will be revoked and replaced by domestic customs provisions put in place by HMRC which will come into force on implementation period (IP) completion day.
- 2.3 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. Excise Movement Control System (EMCS)) and laws and guidance being set down by to apply these by HMRC. Similar changes are being made to reflect UK as opposed to EU legislation regarding food produce.
- 2.4 Articles 2(2)(g) and 2(3) of Regulation (EU) 1169/2011 prescribes the meaning of ‘country of origin’ via reference to other EU legislation.

Why is it being changed?

- 2.5 Rules need to be changed as existing EU regulations will be revoked on IP completion day and replaced with domestic measures. 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.
- 2.6 Under both the EU food labelling rules applicable in the UK during the IP, and the UK rules that will apply in GB after the IP, country of origin must be indicated on the label of certain foods. The meaning of country of origin is prescribed via Articles 2(2)(g) and 2.3 of Regulation (EU) 1169/2011. This instrument will amend Articles 2(2)(g) and 2.3 of the retained version of Regulation (EU) 1169/2011 such that the definition is coherent in the context of UK law.

What will it now do?

- 2.7 This legislation will make necessary changes to retained versions of EU regulations to ensure that laws in this area will remain operable after the IP.
- 2.8 It will also set out various changes that will reflect the interdependencies with other legislation, primarily that made by HMRC, to ensure that following the transition from Single Customs Union controls to UK specific customs controls they continue to operate correctly.
- 2.9 This instrument will make the meaning of ‘country of origin’ in relation to food labelling coherent in UK law by substituting references to further EU legislation made in Articles 2(2)(g) and 2(3) of Regulation (EU) 1169/2011 with references to new UK legislation made by HMRC in Articles 2(2)(g) and 2(3) of the retained version of Regulation (EU) 1169/2011.
- 2.10 In relation to wine, amendments are being made to Article 21 of Commission Delegated Regulation (EU) 2018/273 concerning exemptions to wine import certification arrangements in relation to small consignments of wine sent from one private individual to another and wine and grape juice for trade fairs. Changes will make these exemptions contingent on compliance with certain provisions in HMRC’s UK Reliefs document relating to duty relief arrangements. It also supporting definitions for trade fairs and the UK Reliefs Document.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

- 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 England Wales and Scotland.
- 4.3 This instrument concerns retained direct EU legislation which is incorporated into domestic law under section 3 of the European Union (Withdrawal) Act 2018 save insofar as it applies to Northern Ireland for the purposes of the Protocol. Accordingly, it will be of no practical application in Northern Ireland as the Protocol instead applies the EU law provisions in Northern Ireland.

5. European Convention on Human Rights

- 5.1 As the 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 certain minor aspects of the UK wine import and trade regime, to function appropriately after 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 the appropriate rules to cover 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 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 IP.

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

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. 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 was not subject to consultation because its purpose is to ensure effective legislation is in place to enable the continued operation of existing wine policy in the UK when we leave the EU.
- 10.2 Defra has engaged with the Devolved Administrations and stakeholder 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 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 Wines - Philip Munday at Defra Telephone: 0208 026 3885 or email: philip.munday@defra.gov.uk can be contacted with any queries regarding the instrument. Food labelling – Brian Longman at Defra Telephone: 0208 026 8301 or email: brian.longman@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 Rt Hon Victoria Prentis MP, Parliamentary Under Secretary of State for Agriculture, Fisheries and Food, 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 |
| 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 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 | Set out the 'good reasons' for creating a criminal offence, and the penalty attached. |

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| | | 23(1) or jointly exercising 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 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. Sifting statement(s)

- 1.1 The Rt Hon Victoria Prentis MP 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 2020 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

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 The Rt Hon Victoria Prentis MP 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 2020 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 this explanatory memorandum, after the Implementation Period.

3. Good reasons

- 3.1 The Rt Hon 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”.

- 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 The Rt Hon Victoria Prentis 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.

- 4.2 The Rt Hon Victoria Prentis 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, Victoria Prentis MP Parliamentary Under Secretary of State 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.