

**EXPLANATORY MEMORANDUM TO**  
**THE COMMON ORGANISATION OF THE MARKETS IN AGRICULTURAL**  
**PRODUCTS (AMENDMENT) REGULATIONS 2022**

2022 No. [XXXX]

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Sifting Committees.

**2. Purpose of the instrument**

- 2.1 This instrument makes various technical amendments to retained EU and EU derived domestic legislation relating to marketing standards for agricultural products. The amendments fall into two categories; consequential amendments resulting from the introduction of the Agriculture Act 2020; and operability amendments arising from the UK's Exit from the European Union (EU). The purpose of the instrument is to ensure an accurate and up to date statute book. The amendments do not change existing policy in any way.

**3. Matters of special interest to parliament**

- 3.1 *Matters of special interest to the Joint Committee on Statutory Instruments*  
None

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application (that is, where the instrument produces a practical effect) of Chapter 1 of Part 2 and Chapter 1 of Part 3 of this instrument is England and Wales.
- 4.3 The territorial application (that is, where the instrument produces a practical effect) of Chapter 2 of Part 2 and Chapter 2 of Part 3 of this instrument is England.

**5. European Convention on Human Rights**

- 5.1 The Minister of State for Agriculture, Fisheries and Food, Rt Hon Mark Spencer MP has made the following statement regarding Human Rights:  
  
“In my view the provisions of the Common Organisation of the Markets in Agricultural Products (Amendment) Regulations 2022 are compatible with the Convention rights.”

**6. Legislative Context**

*Operability amendments*

- 6.1 The European Union (Withdrawal) Act 2018 (“EUWA”) provided for EU derived domestic legislation and direct EU legislation to continue to have effect in domestic law on and after 31 December 2020 (“retained EU law”). It also provided for

amendments to be made to address deficiencies arising from EU exit. This instrument uses the powers in sections 8(1) and 8C(1) of, and paragraph 21 of Schedule 7 to, EUWA to make various operability amendments to address deficiencies in direct EU and EU derived domestic legislation arising from the UK's exit from the EU.

Consequential amendments

- 6.2 Retained Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products ("the CMO Regulation") is the framework for the functioning and administration of the Common Organisation of Agricultural Markets. The CMO Regulation sets out general marketing standards for agricultural products and provides powers to make and amend marketing standards legislation.
- 6.3 The introduction of the Agriculture Act 2020 ("the Act") necessitates consequential amendments to retained EU and EU derived domestic legislation relating to marketing standards. This is because of new provisions introduced by the Act, including Section 37 which introduced new powers for the Secretary of State to make and amend marketing standards regulations.
- 6.4 Schedule 7 of the Act sets out the consequential amendments which will be made to the CMO Regulation once Schedule 7 is commenced. Once it enters into force by commencement regulation, Part 3 of Schedule 7 will amend the CMO Regulation to disapply provisions regarding carcass classification in relation to slaughterhouses in England and provisions regarding marketing standards relating to products marketed in England, making them redundant. Existing marketing standards set out in Regulations made by the European Commission (under Section 1 or Section 3 of Chapter 1 of Title 2 of the CMO Regulation) continue to apply to products marketed in England by virtue of paragraph 17 of Part 3 of Schedule 7 to the Act, even though the powers under which they were made will be disapplied when Part 3 of Schedule 7 is commenced.
- 6.5 This instrument therefore uses powers in sections 50(3) and 53(1) of the Act to make consequential amendments to retained direct EU legislation and EU derived domestic legislation to ensure an accurate and up to date statute book is maintained.
- 6.6 The legislation amended by this instrument is:
  - Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products
  - Commission Regulation (EC) No 543/2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat
  - Commission Regulation (EC) No 617/2008 laying down detailed rules for implementing Regulation (EC) No 1234/2007 as regards marketing standards for eggs for hatching and farmyard poultry chicks
  - Commission Implementing Regulation (EU) No 543/2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors
  - Commission Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products

- Regulation (EU) No 251/2014 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91
- Commission Delegated Regulation (EU) 2019/934 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards wine-growing areas where the alcoholic strength may be increased, authorised oenological practices and restrictions applicable to the production and conservation of grapevine products, the minimum percentage of alcohol for by-products and their disposal, and publication of OIV files
- Commission Implementing Regulation (EU) 2019/935 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards analysis methods for determining the physical, chemical and organoleptic characteristics of grapevine products and notifications of Member States decisions concerning increases in natural alcoholic strength
- Hops Certification Regulations 1979 (S.I. 1979/1095)
- Marketing of Fresh Horticultural Produce Regulations 2009 (S.I. 2009/1361)
- Eggs and Chicks (England) Regulations 2009 (S.I. 2009/2163)

## 7. Policy background

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

- 7.1 This instrument makes consequential amendments and operability amendments to ensure the statute book is up to date and continues to function effectively. All the amendments made by this instrument are technical in nature and do not change current policy.

### Part 2 Chapter 1 (Regulations 2-4)

- 7.2 Regulations 2-4 make operability amendments to address deficiencies in retained direct EU legislation relating to marketing standards:
- Regulation 2 amends Annex 14 of Council Regulation (EC) 1234/2007 concerning marketing standards for hatching eggs and chicks and poultrymeat by inserting definitions of “relevant authority” and “third country” and replacing references to the European Community and Member States.
  - Regulation 3 amends Commission Regulation (EC) 543/2008 on poultrymeat marketing standards to substitute a reference to a directive with corresponding domestic legislation, and to remove a reference to a provision which has been omitted; it also updates a reference to a European Norm standard which has been replaced.
  - Regulation 4 updates the same European Norm reference in Annex 7 of the CMO regulation.

### Part 2, Chapter 2 (Regulations 5-11)

- 7.3 Regulations 5-11 of this instrument make consequential amendments to retained direct EU legislation in order to either omit cross references to articles of the CMO Regulation which are disappplied on commencement of Part 3 of Schedule 7 to the Agriculture Act or substitute references to articles of the CMO Regulation with an

appropriate reference to retained EU legislation or to the Agriculture Act 2020. These consequential amendments are necessary to retain an accurate and up to date statute book.

Part 3, Chapter 1 (Regulation 12)

- 7.4 Regulation 12 makes an operability amendment to the Hops Certification Regulations 1979. Regulation 3(1)(f) of the Hops Certification Regulations 1979 is now surplus to requirement due to provisions made by the United Kingdom Internal Market Act 2020 which guarantee that hops and hop products can continue to be moved from Northern Ireland to Great Britain providing that they meet with requirements for sale in Northern Ireland. As such, this instrument operates to omit Regulation 3(1)(f) from the 1979 Regulations to ensure clarity.

Part 3, Chapter 2 (Regulations 13 and 14)

- 7.5 Regulations 13 and 14 make consequential amendments to EU derived domestic legislation to omit references to Articles of the CMO regulation disapplied on commencement of Part 3 of Schedule 7 to the Act.
- 7.6 Regulation 13 amends The Marketing of Fresh Horticultural Produce Regulations 2009 to omit references to Article 75 of the CMO regulation. Regulation 14 makes changes of a similar nature to The Eggs and Chicks (England) Regulations 2009.

***What did any law do before the changes made by this instrument?***

- 7.7 The CMO Regulation sets out general marketing standards for agricultural products and gives the Secretary of State the power to make and amend legislation regarding marketing standards. The CMO Regulation is supplemented by retained direct EU legislation and EU derived domestic legislation setting out detailed standards relating to marketing requirements, certification requirements and import requirements for each agricultural product. Marketing standards are intended to make sure that products offered to consumers are accurately and consistently labelled, are of acceptable quality and that unsatisfactory produce is kept off the market.

***Why is it being Changed?***

- 7.8 Part 3 of Schedule 7 to the Act, once it comes into force by commencement regulation, will make consequential amendments to the CMO Regulation to disapply various provisions. These amendments are made in consequence of the introduction of the powers in section 37 (marketing standards) and section 40 (carcass classification) of the Act, together with the rest of Part 5 of the Act. The disapplication of these provisions means that cross references to them in numerous pieces of existing marketing standards legislation must be updated to retain an accurate and up to date statute book. This instrument also corrects various deficiencies in retained EU law relating to the UK's exit from the EU.

***What will it now do?***

- 7.9 This instrument does not change policy. It makes necessary consequential amendments to retained direct EU legislation and EU derived domestic legislation to omit, and where clarification is required, substitute references to CMO regulation provisions disapplied by the Act. This instrument also makes operability amendments to retained EU law and EU derived domestic secondary legislation to remove references which are redundant or are no longer appropriate.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 As parts of this SI are being made under powers in section 8 of EUWA, it is subject to sifting. In accordance with the requirements of EUWA, the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

## **9. Consolidation**

- 9.1 Not applicable to this instrument.

## **10. Consultation outcome**

- 10.1 A six-week targeted engagement with relevant industry stakeholders was carried out between 27<sup>th</sup> April and 7<sup>th</sup> June 2022. Targeted stakeholders included representative trade bodies, retailers, sole traders and importers based in England, and representative Welsh stakeholders consulted on behalf of the Welsh Government.
- 10.2 No substantive comments or questions were received in response to the engagement. Targeted stakeholders have been informed of the outcome of the engagement.

## **11. Guidance**

- 11.1 Defra is not producing any specific guidance for this instrument, as it makes technical amendments to update and ensure operability of retained EU law and EU derived domestic legislation which do not change current policy.

## **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 no significant impact on businesses is foreseen, as this SI relates to maintenance of existing regulatory standards and is technical in its nature.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that this instrument does not place any burdens on small businesses, therefore no action needs to be taken.

## **14. Monitoring & review**

- 14.1 Defra and its agencies will monitor and review the impact of the instrument as part of its standard policy-making procedures and will ensure that the provisions are adhered to.
- 14.2 As this instrument is made under EUWA no review clause is required.

## **15. Contact**

- 15.1 Nick Gray at the Department for Environment, Food and Rural Affairs (telephone: 07557 191330 or email: [Nick.Gray@defra.gov.uk](mailto:Nick.Gray@defra.gov.uk)), or Chris Sanderson (telephone: 07500 390043 or email: [Christopher.Sanderson@defra.gov.uk](mailto:Christopher.Sanderson@defra.gov.uk)) can be contacted with any queries regarding this instrument.
- 15.2 Balwinder Dhoot, Deputy Director for Farming, Food, Sectors and Trade, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rt Hon Mark Spencer at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

# Annex

## Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

### Part 1A

#### 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) or 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) or 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) or 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) or 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) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has	Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether

		made a political commitment to include these statements alongside all EUWA SIs	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) or 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 section 8 or 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 5 or 19, Schedule 7.	Statement of the reasons for the Minister’s opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament 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.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion 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 IP completion day, and explaining the instrument’s effect on retained EU law.



## Part 1B

### Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

<b>Statement</b>	<b>Where the requirement sits</b>	<b>To whom it applies</b>	<b>What it requires</b>
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 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

## Part 2

### Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

#### 16. Sifting statement(s)

- 16.1 The Minister, Rt Hon Mark Spencer 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 (Amendment) Regulations 2022 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e., the negative procedure).”
- 16.2 This is the case because the amendments contained within are technical in nature, do not place additional burdens on the general public and are not controversial.

#### 17. Appropriateness statement

- 17.1 The Minister, Rt Hon Mark Spencer 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 (Amendment) Regulations 2022 does no more than is appropriate”.
- 17.2 This is the case because this draft instrument does not affect a policy change but makes technical changes which are required due to the disapplication of provisions in the CMO Regulation. These provisions are disapplied as a result of the commencement of Part 3 of Schedule 7 of the Agriculture Act 2020. In the case of Part 2 Chapter 1 it also remedies failures of retained EU law to operate effectively by replacing references to obsolete standards and legislation, and by inserting definitions to replace references to the Community and Member States. The amendments are technical in nature and do no more than is necessary to ensure that domestic law continues to function effectively. This is further detailed in sections 2 and 7 of this explanatory memorandum.

#### 18. Good reasons

- 18.1 The Minister, Rt Hon Mark Spencer 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 draft instrument, and I have concluded they are a reasonable course of action”.
- 18.2 These are that the legislative provisions are currently deficient and need to be amended to provide clarity and legal certainty.

#### 19. Equalities

- 19.1 The Minister, Rt Hon Mark Spencer 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.”
- 19.2 The Minister, Rt Hon Mark Spencer 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, Mark Spencer 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.”.

**20. Explanations**

20.1 The explanations statement has been made in section 7 of the main body of this explanatory memorandum.

**21. Explanations where amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972**

21.1 The Minister, Rt Hon Mark Spencer MP, has made the following statement regarding regulations made under the European Communities Act 1972:

“In my opinion there are good reasons for the Common Organisation of the Markets in Agricultural Products (Amendment) Regulations 2022 to amend the Marketing of Fresh Horticultural Produce Regulations 2009 (S.I. 2009/1361) and the Eggs and Chicks (England) Regulations 2009 (S.I. 2009/2163) made under section 2(2) of the European Communities Act 1972. This is because the amendments are consequential to the commencement of Part 3 of Schedule 7 to the Agriculture Act 2020, which will itself make amendments to the CMO Regulation in order to disapply various articles of that Regulation.

21.2 The amendments made to the Marketing of Fresh Horticultural Produce Regulations 2009 (S.I. 2009/1361) and the Eggs and Chicks (England) Regulations 2009 (S.I. 2009/2163) by this instrument will omit references to disapplied articles in the CMO Regulation in order to update these references.”.