

EXPLANATORY MEMORANDUM TO
THE AGRICULTURE (LEGISLATIVE FUNCTIONS) (EU EXIT) (NO. 2)
REGULATIONS 2019

2019 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.

2. Purpose of the instrument

- 2.1 This instrument amends provisions of European Union (“EU”) legislation relating to the EU Common Agricultural Policy (“CAP”), the Common Organisation of Agricultural Markets (“CMO”) and organic food and feed, which are currently carried out by the European Commission (“the Commission”). Under the amendments, these functions will instead be exercisable by public authorities in the United Kingdom (“UK”). This will enable these legislative functions to continue to be used at a national level after the UK leaves the EU.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The EU Regulations concerned cover: CMO schemes; CAP financing, management and monitoring; and organic food and feed.
- 2.3 In each case, the EU Regulations confer various functions on the Commission so that it can develop the technical details required to operate a specific regime. Examples of these functions include: specifying forms to be used; setting financial limits or prices; defining scheme eligibility criteria; establishing key dates; and defining programme or scheme periods. The specific EU Regulations amended by this instrument are outlined in section 1.2 of Annex 2 of this explanatory memorandum.

Why is it being changed?

- 2.4 After EU Exit, without amendment, the legislative functions contained in retained EU Regulations relating to CMO schemes, CAP financing, management and monitoring, and organic food and feed would be inoperable. This would prevent the UK Government and, where applicable, the devolved administrations from being able to make any necessary changes to each policy regime to keep them up to date. This instrument uses powers in the European Union (Withdrawal) Act 2018 to correct this deficiency to enable the functions to be exercised by UK public authorities.
- 2.5 The amendments will ensure that the regimes outlined at section 2.2 will continue to function smoothly after the UK’s withdrawal from the EU. The retained EU Regulations will be amended to the extent necessary to enable them to work in the UK once the UK has left the EU.

What will it now do?

- 2.6 The regimes will continue to function after the UK’s withdrawal from the EU in a similar way to how they did previously. This instrument changes the identity of the

bodies carrying out the specified functions and converts the EU procedures to UK procedures, as appropriate. A full explanation of the amendments being made within this instrument can be found in Annex 2 to this explanatory memorandum.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 This instrument has effect in the whole of the United Kingdom and, as such, the English Votes for English Laws procedure is not applicable to this instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the UK.

4.2 The territorial application of this instrument is the UK.

5. European Convention on Human Rights

5.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Agriculture (Legislative Functions) (EU Exit) (No. 2) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

6.1 The corrections made by this instrument relate will create regimes for the UK that will respect the UK devolution settlements. In most instances, where regimes are devolved, the powers will be transferred to the relevant Ministers or department of Scotland, Wales and Northern Ireland, but with provision for the Secretary of State to act on behalf of Scottish Ministers, Welsh Ministers or the Department of Agriculture, Environment and Rural Affairs (“DAERA”) in Northern Ireland, with consent. The ability of the Secretary of State to be able to act for one or more of the devolved administrations will allow for powers to be exercised uniformly across the UK or across certain constituent nations, where it is convenient to do so. In certain cases, the ability of the Secretary of State to act with the consent of Ministers does not apply to Wales.

6.2 Additionally, there are certain powers where it has been agreed by the UK administrations that the nature of the provisions requires that the legislative powers be exercised uniformly across the whole of the UK. In such cases the power is conferred on the Secretary of State, but the Secretary of State may only act if all four constituent nations agree. Some legislative powers may be exercised in multiple policy areas, some of which fall under reserved competence, some under devolved competence. Where these powers are exercised in policy areas which fall outside of devolved competence, the legislative function is conferred on the Secretary of State. Where these powers are exercised in policy areas which are within devolved competence, the function is conferred on the relevant authorities for the constituent nations, but with

provision for the Secretary of State to act on behalf of Scottish Ministers, Welsh Ministers or DAERA, with consent.

- 6.3 As part of the process of the UK's withdrawal from the EU, Defra will also introduce other instruments related to this instrument before EU Exit whose main purpose will be to correct retained EU Regulations relating to the CAP and organic food and feed. These related instruments concern:
- i. Retained EU Regulations relating to the CMO, which provides support for market interventions to promote or stabilise agricultural product markets under the European Agricultural Guarantee Fund of the CAP;
 - ii. Retained EU legislation relating to the "Horizontal" (cross-cutting) framework for the financing, management and monitoring of the CAP;
 - iii. Existing UK domestic legislation that implements the CAP in the UK;
 - iv. Retained EU legislation relating to organic food and feed;
 - v. Further organic food and feed transfer of functions (covering import processes and the recognition of third country control bodies) which are considered by Defra as not devolved will be made in another instrument; and
 - vi. The transfer of other legislative functions relating to the CAP to appropriate UK bodies that are not covered by this instrument.
- 6.4 This instrument amends retained EU law to the extent necessary to enable it to work in the UK when the UK has left the EU.

7. Policy background

What is being done and why?

- 7.1 EU law frequently gives the Commission the power to make further law (often called "delegated" or "implementing" acts). This is generally to allow the making of technical measures or further detail, such as: prescribing forms to be used; adapting the law to scientific or technical change; or to reflect changes in international agreements.
- 7.2 As part of the corrections necessary to make the EU law covered by this instrument (see section 1.2 of Annex 2 of this explanatory memorandum) operate effectively after the UK's withdrawal from the EU, it is necessary to amend these provisions to ensure that, where appropriate the functions are carried out by an appropriate authority in the UK after EU Exit. Details relating to which function will be carried out by which appropriate authority in each instance can be found in section 2-9 of Annex 2 of this explanatory memorandum. This will prevent a need for making primary legislation to make such changes.
- 7.3 Across Defra's policy areas, a considerable amount of EU law exists that confers such functions on the Commission. This instrument is one of several instruments that Defra will introduce to correct retained EU law relating to the CAP and organic food and feed, to enable the functions in that law to be exercised instead by UK public authorities. The policy areas amended by this instrument are:
- i. CAP CMO;
 - ii. CAP financing, management and monitoring ("Horizontal" or cross-cutting provisions); and
 - iii. Organic production and labelling.

- 7.4 A detailed explanation of the amendments being made within this instrument for each of the above policy areas can be found in section 2-9 in Annex 2 of this explanatory memorandum.
- 7.5 This instrument changes the identity of the public authority which carries out the specific functions detailed in section 2-9 in Annex 2 of this explanatory memorandum and converts EU procedures to UK procedures, as appropriate. The functions are conferred instead on the Secretary of State, Scottish Ministers, Welsh Ministers and DAERA in Northern Ireland to exercise in their respective areas as detailed in section 6.1-6.2 in this explanatory memorandum. The Secretary of State may also exercise the functions on behalf of a devolved administration, but only with their consent. This instrument, and the policy reflected within it, has been developed in cooperation with officials in the Scottish and Welsh devolved administrations and DAERA in Northern Ireland and respects the devolution settlements.

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(1) of, and paragraph 21 of Schedule 7 to, 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 EU. In accordance with the requirements of that Act, the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 Defra does not intend to consolidate the relevant legislation at this time.

10. Consultation outcome

- 10.1 This instrument was not subject to consultation because its purpose is to solely enable functions contained within this instrument to remain operable by the withdrawal of the UK from the EU.
- 10.2 Despite this, Defra has engaged with stakeholder umbrella organisations regarding CAP agriculture policy. On 25 September 2018, Defra met with the Rural Payments Agency's ("RPA") Industry Partnership Group ("IPG") to update farming and land management stakeholders on the Government's plans for the UK's withdrawal from the EU. At the meeting, stakeholders were informed of the plans to make both retained EU CAP legislation and existing domestic CAP regulations fully operable at the point of the UK's withdrawal from the EU, to enable Defra and the devolved administrations to continue to deliver ongoing CAP Pillar 1 and Pillar 2 commitments to the agriculture sector in 2019 in the event of a non-negotiated EU Exit. No concerns were raised. Stakeholders present were the:
- i. Tenant Farmers Association;
 - ii. Countryside Land and Business Association;
 - iii. Farming Community Network;
 - iv. Institute of Agricultural Secretaries and Agents;
 - v. British Institute of Agricultural Consultants;
 - vi. National Farmers' Union.

- 10.3 A meeting between Defra, the RPA and the IPG was held on 26 November 2018, to update stakeholders further on preparing for the UK's withdrawal from the EU.
- 10.4 Defra has worked with the United Kingdom Organic Certifiers Group (UKOCG) as industry representatives on this and future implementation of the UK regulations once the UK has left the EU.
- 10.5 This instrument, and the policy reflected within it, has been developed in cooperation with officials in the Scottish and Welsh devolved administrations and DAERA in Northern Ireland.

11. Guidance

- 11.1 Defra is not producing any specific guidance on this instrument, as it only makes technical amendments to deficiencies in retained EU law arising from the UK's withdrawal from the EU.
- 11.2 The Government has published Technical Notices at <https://www.gov.uk> to help stakeholders prepare for EU Exit. These provide relevant background information to the CAP and organic food and feed related content of this instrument. They are:
- i. 'Farm payments if there's no Brexit deal' (see: <https://www.gov.uk/government/publications/farm-payments-if-theres-no-brex-it-deal>);
 - ii. 'Producing and labelling food if there's no Brexit deal' (see: <https://www.gov.uk/government/publications/producing-and-labelling-food-if-theres-no-brex-it-deal/producing-and-labelling-food-if-theres-no-brex-it-deal>); and
 - iii. 'Production and processing organic food if there's no Brexit deal' (see: <https://www.gov.uk/government/publications/producing-and-processing-organic-food-if-theres-no-brex-it-deal>).

12. Impact

- 12.1 There is expected to be no, or no significant impact on business, charities or voluntary bodies. Decision making powers will be transferred from the Commission to appropriate UK public authorities. The impact of these new arrangements will be dependent on how these powers are exercised in the future, after EU Exit, which is outside of the scope of this instrument.
- 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 as no, or no significant impact on the private or voluntary sector is foreseen. The purpose of the instrument is to maintain existing regulatory standards and so there is expected to be minimal impact on business. The changes made by this instrument are intended to maintain the status quo in terms of business's regulatory obligations. There should therefore be no changes in business practices and no changes in the direct costs faced by businesses. As a result we are confident that this change in regulation falls below the £5m p.a. threshold for net direct costs to business.

13. Regulating small business

- 13.1 This instrument 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 these instruments are 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 Andrew Crawford at the Department for Environment, Food and Rural Affairs: Telephone: 0208 026 6557 or email: andrew.crawford@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Fiona James and Elen Shepard (job-share), Deputy Directors for CAP EU Exit Preparedness at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 George Eustice MP, the Minister of State for Agriculture, Fisheries and Food, 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

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 European Union (Withdrawal) Act 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	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence.	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, 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) Act 2018

1. Appropriateness statement

1.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Agriculture (Legislative Functions) (EU Exit) (No. 2) Regulations 2019 does no more than is appropriate”.

1.2 This is the case because this instrument provides for the exercise of legislative functions by UK public authorities, as appropriate, given the nature of the functions concerned. These are required for the continued effective functioning of the policy regimes described in section 2-9 of Annex 2 of this explanatory memorandum after the UK has withdrawn from the EU.

2. Good reasons

2.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice 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”.

2.2 These are: that without this instrument, the EU Regulations listed at section 1.2 of Annex 2 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 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement:

“This 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 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to this draft instrument, I, George Eustice 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 The Minister of State for Agriculture, Fisheries and Food, George Eustice 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 a relevant sub-delegated power in Agriculture (Legislative Functions) (EU Exit) (No. 2) Regulations 2019.”

5.2 This is appropriate because: the provisions to which this applies are provisions which the Commission currently exercises through implementing or delegated acts, but which it is more appropriate, in the domestic context, to exercise administratively. These are provisions:

- i. To open and close tendering procedures for public intervention; and
- ii. To set the annual year work programme and objectives for information and promotion measures and subsequently select the programmes and allocate a budget to them, following a call for proposals.

Annex 2

Further detail on the amendments made by this Statutory Instrument set out in the main body of this explanatory memorandum

1. Further detail on EU Regulations amended made by this instrument.

- 1.1 The Agriculture (Legislative Functions) (EU Exit) (No. 2) Regulations 2019 covers three main policy areas: the European Union (“EU”) Common Agricultural Policy (“CAP”), the Common Market Organisation (“CMO”), and organic food and feed. This instrument amends a number of EU Regulations in these policy areas to ensure that after EU Exit, functions currently carried out by the European Commission (“the Commission”) will instead be carried out by the relevant public authority in the United Kingdom (“UK”).
- 1.2 The specific EU Regulations amended by this instrument are:
- i. Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007;
 - ii. Council Regulation (EU) No 1370/2013 of 16 December 2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products;
 - iii. Regulation (EU) No 1144/2014 of the European Parliament and of the Council of 22 October 2014 on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries and repealing Council Regulation (EC) No 3/2008;
 - iv. Commission Implementing Regulation (EU) 2016/1240 of 18 May 2016 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to public intervention and aid for private storage;
 - v. Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy; and
 - vi. Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91.

2. Further detail about these amendments made by this instrument to these regulations can be found below:

3. CAP Common Organisation of Agricultural Markets (“CMO” regulations detailed in section 1.2 i.-iv. above):

- 3.1 The CMO originates from the EU CAP and it has developed over time to enable the EU to manage market volatility, encourage cooperation between and competitiveness of agricultural producers and to facilitate trade. The amendments in this instrument will ensure that retained EU CMO law can continue to operate effectively after the UK’s withdrawal from the EU.

- 3.2 This statutory instrument contains CMO legislative functions to make delegating or implementing acts arising from the EU Regulations set out in section 1.2 i.-iv. above. The changes in this instrument relating to these functions are detailed below:
4. **Establishing the CMO.** Regulation (EU) No 1308/13 provides a legislative framework which delivers all of the basic elements of the CMO and applies to all agricultural products listed in Annex I to the Treaty on the European Union (TEU) and to the Treaty on the Functioning of the European Union (TFEU) in order to ensure the existence of a “common organisation of the market” for all such products.
- 4.1 The particular legislative functions in this instrument cover a range of different areas, including the powers to open public intervention or offer private storage aid. They also lay down the arrangements including quality of products, trigger price thresholds, aid payments, tender procedures and enforcement for various eligible products.
- 4.2 The powers also cover the functioning of aid schemes, including the school milk and fruit and vegetable scheme, by setting their strategy and scope to ensure that the aid to school children is appropriately targeted. It also includes aid to producer organisations operating in the fruit and vegetable sector, where powers ensure such aid is targeted, efficient and sustainable. Specifically, this includes powers to deliver aid for apiculture, through: providing technical assistance; providing support in combating disease; restocking of bee hives; market monitoring and product quality enhancement.
- 4.3 This instrument also contains powers in relation to marketing standards, which: deliver the ability to adapt to changing market conditions, evolving consumer demands and developments in international standards; avoid creating obstacles to product innovation for products including beef and veal, wine, milk and milk products, poultry meat, eggs, spreadable fats and olive oil. Additional powers cover the potential to amend the registration and documentation of wine products certifying protected designations of origin or geographical indications.
- 4.4 This instrument also details powers providing for the ability to establish a system of price reporting in the sugar sector, with information collected and reported in a confidential and anonymised manner.
- 4.5 In relation to tariff quotas, powers to determine the management and rules of these quotas are included in this instrument, to ensure fair access for the qualities available and to ensure that the annual tariff quotas are administered correctly.
- 4.6 Powers also are included in this instrument that will enable the UK to facilitate an efficient and effective reaction to threats of markets disturbance caused by significant price rises or falls on internal or external markets or other events. The instrument will also help deal with circumstances which are significantly disturbing, or which threaten to disturb, the market where that situation is likely to continue or deteriorate, and contains the measures to address that market situation. This includes exceptional support for affected markets to take account of restrictions arising from disease control measures and associated loss of consumer confidence in affected products. Affected products covers: beef and veal, milk and milk products, pig meat, sheep meat, goat meat, eggs and poultry meat. The powers also facilitate justifiable emergency measures to resolve specific problems for an appropriate time period, which is usually for no more than twelve months.
5. **Determining measures on fixing certain aids and refunds related to CMO.** Council Regulation (EU) No 1370/2013 sets the thresholds and rates for CMO aid

schemes and Public Intervention and Private Storage Aid. The powers being amended include powers to amend reference thresholds, restrict tendering procedures to certain regions and adjust buying-in prices. Currently, the Commission open and close public intervention through making Regulations. After exit, the opening and closing of public intervention will be administrative as this is better suited to domestic practice.

6. **Information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries.** Regulation (EU) No 1144/2014 relates to the promotion measures in the internal market and in third countries for agricultural products and their production methods and for certain food products. Article 4 of this Regulation enables the appropriate authority to make regulations laying down detailed rules concerning commercial brands. Specifically this relates to the visibility of commercial brands, for example during demonstrations or tastings or on information and promotional material, as well as the uniform conditions under which a single brand may be displayed. Under Article 5(2) of this Regulation, in order to take account of market developments, the appropriate authority may make regulations supplementing the list in Annex I to this Regulation by adding food products to that list. Certain powers in this Regulation which are currently legislative will, after EU Exit, be conferred on the appropriate authority to be exercised administratively as this is better suited to domestic practice. These powers set the annual work programme and the objectives, evaluation and selection of programmes following the call for proposals.
7. **Public intervention and aid for private storage.** Commission Implementing Regulation No 2016/1240 deals with public intervention and aid for private storage. Articles 12, 28 and 39 of this Regulation relate to buying in via a tendering procedure of products such as beef and rice. The appropriate authority may open a tendering procedure for the buying-in of beef by category or region on the basis of the two most recent recorded weekly market prices. The appropriate authority may close the tendering procedure on this basis of the most recent recorded weekly market prices. Currently the opening and closing of the tendering process is by way of Regulations. The tendering process is, however, better suited to being an administrative procedure domestically so these powers will be amended to allow for them to be exercised administratively after EU Exit.
 - 7.1 These CMO functions outlined above are transferred to the Secretary of State, Scottish Ministers, Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs (“DAERA”) in Northern Ireland, to be carried out in their respective areas. The Secretary of State may also carry out these functions on behalf of a devolved administration, but only with its consent.
8. **CAP financing, management and monitoring (“Horizontal” or cross-cutting regulations detailed in section 1.2 v. above):**
 - 8.1 Regulation (EU) No 1306/2013 provides powers for the Commission to lay down rules on the establishment of an analytical databank of isotopic data to help detect fraud to be constructed on the basis of samples collected by Member States, the procedures relating to the Member State’s own databanks and the rules for performing the checks of compliance with marketing standards. This databank contains data on the isotopic composition of authentic wines collected from wine producing regions across the EU over many years. It is used to detect the undeclared addition of sugar before fermentation to increase alcoholic strength and addition of water. The data can also be used to assess the correctness of geographical indications.

- 8.2 The Commission is also empowered to lay down rules which ensure non-discriminatory treatment, equity and respect of proportionality when lodging a security; the form of the security, the procedure for lodging a security, for accepting it and for replacing the original security; and the procedures for the release of a security.
- 8.3 The legislative powers in Regulation (EU) No 1306/2013 ensure that the analytical databank of isotopic data can be established and maintained in order to protect the EU market from fraud and that the rules and procedures for lodging, holding and releasing securities are applied in an equitable and non-discriminatory manner.
- 8.4 The functions related to securities are conferred on the Secretary of State, Scottish Ministers, Welsh Ministers and DAERA or Department of Health, to exercise in their respective areas where the exercise of the power does not relate to a reserved matter (for example, Public intervention). In a matter which is within devolved competence the Secretary of State may also exercise the functions on behalf of a devolved administration, but only with their consent. Where the power relates to a reserved matter (for example, reserved CMO schemes which may require a security to be utilised) this power shall be exercised by the Secretary of State for the whole of the UK.
- 9. The Organic Production and Labelling Regulations: (regulations detailed in section 1.2 vi. above):**
- 9.1 Council Regulation (EC) No 834/2007 establishes rules for the production, processing, imports, exports and labelling of organic food and feed. This Regulation is amended to the extent necessary to enable it to work in the UK when we have left the EU. The certification and traceability of organic food and feed products will continue to be required.
- 9.2 Regulation (EU) No 834/2007 provides the Commission with powers to: decide on measures to implement the prohibition on genetically modified organisms (“GMOs”); decide on measures to implement rules for production, conversion, processing, approval of certain products, exceptional production, labelling, precautionary and control measures; ensure notification of UK organic operators, and set out the forms and method of communications.
- 9.3 There are instances where ‘shall’ has been changed to ‘may.’ The Instrument amends duties in this legislation where the duty has already been carried out by the EU. An example of this is where the legislation places a duty on the Commission to lay down detailed rules (Article 38). These rules have been laid down in the implementing legislation and so there is no longer a need to require detailed rules to be made. This Instrument, however, retains the power to lay down detailed rules and provides that we may do so.