

**EXPLANATORY MEMORANDUM TO**  
**THE AGRICULTURAL PRODUCTS, FOOD AND DRINK (AMENDMENT ETC.)**  
**(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 Command of Her Majesty.

**2. Purpose of the instrument**

2.1 Primarily, this instrument will amend retained EU legislation to introduce a comprehensive regulatory framework for Geographical Indication (GI) schemes in the UK. This instrument also makes operability amendments for wines and spirits sector standards (non-GI).

2.2 On GI schemes, this instrument corrects the retained EU Regulations that will form the legal basis for three of four schemes in Great Britain (GB) at the end of the transition period, plus amendments needed for operation of the wine GI scheme. This includes providing continued protection in GB of established UK GIs, and non-UK GIs recognised under the EU GI schemes on 31<sup>st</sup> December 2020.

2.3 This instrument reflects the position of the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement (“the Protocol”). This means, for the duration of the Protocol, the territorial extent of the new GI schemes will not include Northern Ireland, which remains under the EU rules. However, as the schemes will be administered and regulated by the UK Government, they are referred to as the ‘UK GI Schemes’ for the remainder of this document (whilst references to the schemes’ territorial extent are to GB).

*What are Geographical Indications?*

2.4 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. UK examples include: Scotch Whisky, English and Welsh Wine, Welsh Lamb and Lough Neagh Eels. Having GI status gives assurance to consumers that products are genuine and enables producers to better promote and market their products.

2.5 GI scheme award designations are Protected Designations of Origin (PDO), Protected Geographical Indications (PGI) and Traditional Speciality Guaranteed (TSG). The PGI designation means that some elements of production and/or raw materials can take place outside the defined geographical area, whilst a PDO designation requires all aspects of production, including sourcing materials, to take place within the defined geographical area. The TSG designation is for a product made to a traditional recipe or method, but it does not have to be made in a specific area. There are four GI schemes; agricultural products and foodstuffs (agri-food), spirit drinks, wines and aromatised wines.

## ***Explanations***

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

- 2.6 The retained EU legislation amended by this instrument makes up the majority 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 being imitated or evoked 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.
- 2.7 The retained EU legislation also provides the basis to protect certain ‘traditional terms’ used in the marketing of wine products, for example ‘*Grand Cru*’ and ‘*Reserva*’. The legislation also sets out rules on the wine-making practices that can be used to produce wine or import/export it, including registration, labelling and certification. On spirit drinks, the legislation also provides the regulation of their composition and labelling.

### *Why is it being changed?*

- 2.8 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 in Great Britain. The retained EU and domestic legislation being amended by this instrument is set out in the legislative context section of this document.
- 2.9 This instrument consolidates amendments contained in several earlier instruments in order to bring together the relevant content and revoke material which has been superseded (e.g. due to replacement EU legislation, or the application of the transition period). This will streamline the GI legislative framework for the benefit of stakeholders and for parliament.

### *What will it now do?*

#### **2.10 *GI Schemes***

This instrument will amend the retained EU regulations that establish GI schemes, so that they can function as domestic GI schemes. More specifically this will:

- Provide the legal framework in England, Scotland and Wales to administer and enforce GI schemes for agri-foods, spirit drinks and aromatised wine, and ensure functionality of much of the wine scheme. Taken together with other GI Exit legislation, this will enable the UK to meet WTO TRIPS agreement obligations;
- Ensure continued protection in GB of existing UK GIs and of relevant non-UK GIs;
- Enable applications for GB GI protection for agri-foods, spirit drinks and aromatised wine products by UK and third country applicants;
- Establish GB GI registers, with entries thereon meaning GI protection takes effect;
- Condense the current two stage Member State/European Commission application process into a single domestic process;

- Preserve the existing relationship between GIs and trade marks in determining whether a trade mark can be granted;
- Establish the new domestic GI logo in law, for use by relevant GI producers and remove the requirement for EU GI logos to be used.
- Put in place appeals procedures enabling appeals against relevant scheme decisions to be made to the First-tier Tribunal;
- Amend the relevant domestic legislation that is currently used for the enforcement of the EU Regulations, applying this respectively for different circumstances in GB and Northern Ireland after the transition period.

The following policy-specific provisions also apply:

### 2.11 *Spirit drinks*

This instrument amends the relevant spirit drinks rules, to:

- Make operability amendments to the GI rules in the 2019 Spirit Drinks Regulation (in the manner described in section 2.10), and
- Consolidate amendments to the non-GI rules in the 2008 EU Spirit Drinks Regulation, which continue to apply in the EU until May 2021 and will therefore become retained EU law in Great Britain. This will ensure that the labelling and composition of spirit drinks will be regulated in the GB in much the same way as they are regulated now.

Details of these rules, and the regulations affected, are set out in section 7.

### 2.12 *Wines*

In addition to some of the GI specific provisions in section 2.10 applying to wines, this instrument contains a small number of non-GI technical operability amendments so that the EU wine regulations can function in GB law. These include:

- Provisions specifying the documents that must accompany wine products when imported into or out of GB.
- Exemptions to the obligations on accompanying documents for wine movements.
- Rules on the use of certain labelling terms for certification and marketing purposes.
- Rules on the use of registers maintained by wine sector operators.
- Arrangements for conducting trials on experimental use of new winemaking practices and processes.

Details of these rules, and the regulations affected, are set out in section 7.

### 2.13 *Aromatised wines*

Beyond the GI specific provisions in section 2.10, this instrument contains a small number of non-GI technical operability amendments, so that the EU aromatised wine regulations can function as GB law. These include:

- The definition, description, presentation and labelling of aromatised wine products.
- Relevant checks and verifications of aromatised wine products.

## 2.14 *Agri-foods*

In addition to introduction of the new GI logo for the schemes (and the general functions in section 2.10), this instrument includes further logo provisions which are specific to the agri-food GI scheme. These will provide producers of established GB GIs a three-year adoption period before use of the new logos becomes mandatory. The obligation to use the EU GI logos is also removed. A couple of minor agri-food specific provisions are outlined at section 7.15.

## 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 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 Part 2 and Part 4, Chapter 1 of this instrument extend to the United Kingdom.

4.2 The revocations in Part 3 of this instrument match the extent of the regulations being revoked.

4.3 Part 4, Chapter 2 of this instrument extends to Great Britain.

4.4 Part 4, Chapter 3 of this instrument extends to Northern Ireland.

4.5 Part 5 of 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, that Part 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 Victoria Prentis MP, Parliamentary Under-Secretary of State, at the Department for Environment, Food and Rural Affairs, 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 2020 are compatible with the Convention rights.”

## 6. **Legislative Context**

6.1 This instrument mostly contains amendments to retained EU law arising from EU exit and the Protocol which take effect at the end of the transition period. The amendments in Part 2 are made to reflect changes in EU law and may come into force sooner (see regulation 1(4)).

- 6.2 The retained direct EU legislation being amended by this instrument is as follows, with full regulation names set out in Annex 2:
- The Spirit Drinks Regulations 2008 (S.I. 2008/3206)
  - Commission Regulation (EC) No 2870/2000
  - Regulation (EC) No 110/2008 of the European Parliament and of the Council
  - Regulation (EU) No 1151/2012 of the European Parliament and of the Council
  - Commission Implementing Regulation (EU) No 716/2013
  - Regulation (EU) No 1308/2013 of the European Parliament and of the Council
  - Regulation (EU) No 251/2014 of the European Parliament and of the Council
  - Commission Delegated Regulation (EU) No 664/2014
  - Commission Implementing Regulation (EU) No 668/2014
  - Commission Delegated Regulation (EU) 2018/271
  - Commission Implementing Regulation (EU) 2018/274
  - Commission Delegated Regulation (EU) 2019/33
  - Commission Implementing Regulation (EU) 2019/34
  - Regulation (EU) 2019/787 of the European Parliament and of the Council
  - Commission Delegated Regulation (EU) 2019/934
  - Commission Implementing Regulation (EU) 2019/935
  - Regulation (EU) 2019/1753 of the European Parliament and of the Council
- 6.3 This instrument also makes consequential amendments to domestic UK statutory instruments (including, as regards the instruments at bullets 6 to 8 on the following list, amendments to revoke superseded provisions). The domestic secondary legislation being amended is:
- The Spirit Drinks Regulations 2008 (S.I. 2008/3206)
  - The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (S.I. 2009/1976)
  - The Wine Regulations 2011 (S.I. 2011 No. 2936)
  - The Quality Schemes (Agricultural Products and Foodstuffs) Regulations 2018 (S.I. 2018/1275)
  - The Trade Marks (Amendment etc.) (EU Exit) Regulations 2019 (SI. 2019/269)
  - The Food and Farming (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/759)
  - The Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/778)
  - The Food and Drink, Veterinary Medicines and Residues (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/865)
- 6.4 Parallel statutory instruments make equivalent exit amendments to establish the legal basis of the wine GI scheme in GB law. These are:
- The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020,
  - The Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019

- The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019
- The Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2020

These instruments amend the Common Markets Organisation (CMO) Regulation (Regulation (EU) No 1308/2013 of the European Parliament and of the Council), under which wine is a specified commodity.

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?*

GI schemes:

- 7.1 The primary function of this instrument is to provide the domestic framework for all four GI schemes, as necessary for their administration and enforcement. It does this through amending the retained EU GI regulations providing the legal basis for the agri-foods, spirit drinks and aromatised wine schemes, and by amending delegated and implementing retained EU wine regulations necessary for the scheme to effectively operate. Taken together with other EU Exit legislation relating to wine GIs (see section 6.4) this will enable the UK to meet its international WTO TRIPS agreement obligations.
- 7.2 The amendments made by this instrument, combined with the other instruments in section 6.4 and the associated domestic regulations needed to enforce them, will create working UK GI schemes. They will protect the 88 UK geographical and traditional names that are registered under the EU schemes (of which protection of the 78 UK agri-food GIs and 5 UK spirit drinks GIs is provided by this instrument). The amendments will also ensure that non-UK GIs, where successful applications have been made under the EU GI schemes and they are protected under those schemes on the last day of the transition period, continued to be protected in GB.
- 7.3 The scheme amendments made by this instrument are mostly changes to make sure the existing GI rules continue to work as UK GI schemes and there is minimal disruption to stakeholders. Under the new schemes, the Secretary of State will decide whether to grant new GI applications instead of the European Commission and will also decide on applications for GI amendments and cancellations.
- 7.4 Like the EU schemes, applying for UK Scheme GI protection can be made by applicants from the UK and third countries. The key difference is that UK applicants apply directly; third country applicants can also do so but only once protected under the GI scheme that applies in their home nation. (To ensure that Northern Ireland producers are treated equally to producers elsewhere in the UK they will have the option of applying to either the UK or EU schemes, or to both in parallel).
- 7.5 However, there are a few instances where more substantive amendments are necessary to make the schemes operable under domestic law. The main changes include:
- The GI schemes will apply in, and be administered as UK schemes (GB for the duration of the Protocol) and not as EU schemes. All GI applications will go through a single domestic scrutiny and opposition process, rather than the two-

stage process for applications to the EU schemes (i.e. the current Member State and European Commission stages will be combined into a single modified scheme process);

- Appeals provisions are being introduced as a result of the Secretary of State assuming new responsibilities and functions in relation to GIs previously belonging to the EU. Section 7.6 provides further detail.
- The creation and establishment of scheme GI logos for PDO, PGI and TSG designations. These are for use across the four new schemes, but are only required under the agri-food GI scheme (see specific details at section 7.15).

7.6 The new appeals provisions established by this instrument, introduced at section 7.5, will allow relevant parties to appeal to the First-tier Tribunal where they disagree with a Secretary of State's decision on a relevant GI or traditional term application. Decisions that can be appealed against include an application award or rejection, an amendment or a cancellation of the relevant status. An appeal must be brought within 28 days of a decision being published. The introduction of these appeals procedures, and the use of the First-tier Tribunal and General Regulatory Chamber rules, was subject to public consultation. If a decision to award a GI (or traditional term for wine) is appealed, then that GI, or traditional term, will remain on the register and be protected unless and until the appeal is upheld. Further details will be published on the relevant First-tier Tribunal GOV.UK page in time for launch of the GI schemes.

7.7 Additionally, this instrument makes transitional provisions to preserve the existing relationship between GIs and trade marks in determining whether a trade mark can be granted. This will be achieved by recognising the application date to the EU of all pending and existing GIs and traditional wine terms. The ongoing protection of GIs is an important matter for UK trading partners, and this instrument will guarantee continuity of protection and facilitate the successful agreement and ratification of trade deals. The specifics of this provision are:

- For a period of nine months following the end of the transition period, all GI and traditional wine term applications submitted to the UK will be able to refer to their corresponding date of application to the EU, should one exist. This will be relevant to all GIs already protected in the EU, and those where the application to the EU is pending a decision on the last day of the transition period.
- When examining a trade mark application, or in the case of a registered mark, an application for declaration of invalidity is made in the UK, the IPO will use the effective date to determine precedence between conflicting GI and trade mark applications. (The effective date will be the earliest date relevant to the GI or trade mark in light of the trade mark transitional provisions).
- Should the effective submission date of a successful GI application precede a conflicting trade mark application, the GI will be entitled to exclusive use of that name in GB and the trade mark application will be rejected. Should the trade mark application date precede the GI application, the GI will normally be granted and can be used alongside the trade mark.

7.8 This instrument also amends the domestic legislation that currently enforces the EU Regulations for agri-food, spirit drinks, wine and aromatised wine. As amended, the domestic legislation will provide for the enforcement and underpinning of the retained EU GI Regulations (as amended) in GB and the enforcement and underpinning of the EU GI Regulations which apply under the Protocol in Northern Ireland (without the

corresponding amendments). This instrument also makes a very small number of UK-wide non-exit amendments needed to reflect changes made by the EU's replacement Official Controls Regulation that entered into force on 14 December 2019 (see Part 2 of this instrument).

#### Spirit drinks

7.9 The spirit drinks amendments are made to two retained EU regulations which both apply in part at the end of the transition period: new Regulation (EU 2019/787) and old Regulation (EC 110/2008). The new Spirit Drinks Regulation contains both GI and non-GI rules, but with differing dates for when they apply. The GI rules have applied from June 2019, while the non-GI rules will not apply until 2021, and so will not become retained EU law in Great Britain. This instrument amends the relevant GI rules accordingly, to;

- Make operability amendments to the GI rules in the new Spirit Drinks Regulation (EU 2019/787) which have applied since June 2019. This largely concerns the general GI scheme functionality as reflected in the previous section, but with a specific spirit drink scheme provision as per section 7.10.
- Consolidate amendments to the non-GI rules in the old EU Regulation (EC 110/2008) that will apply until May 2021, and so will become retained EU law in Great Britain. These will ensure that the labelling and composition of spirit drinks will be regulated in the GB in much the same way as they are regulated now. See section 7.11. *[To note, the new non-GI elements will become applicable in Northern Ireland from May 2020].*

7.10 The replacement EU Spirit Drink Regulation (EU 2019/787), which has applied in part from 8 June 2019, is the subject of Regulation 28 of this instrument. The amendments convert the EU GI scheme for spirit drinks into a UK scheme. As well as the generic GI scheme functionality set out from sections 7.1 to 7.8, it also includes the creation and maintenance of a domestic spirit drinks GI register. The EU power to list third-country GIs on the spirit drinks register will be amended so that spirit drinks which the UK agrees to protect in GB through international trade agreements, can be listed on the 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). *[To note, that EU delegating and implementing regulations under 2019/787 are expected to enter into force later in 2020. Assuming this happens, they will be amended for retention in GB law via separate exit legislation].*

7.11 With respect to the smaller proportion of non-GI spirits provisions being amended by this instrument (as per EC 110/2008), necessary corrections are being made to ensure their continued functionality in GB in much the same way as they are regulated now. This concerns provisions which set out spirit drinks definitions, composition and labelling from the parent regulation, and provisions on compound terms and allusions, under implementing regulation 716/2013.

#### Wines

7.12 Amendments for wine made by this instrument concern both GI provisions and non-GI provisions. However, wine differs from the other GI schemes as its primary legal framework is provided by legislation beyond this instrument (see section 6.4). This instrument amends the delegated and implementing legislation responsible for specific



aspects of the wine GI scheme functionality. The wine GI scheme also encompasses the protection of traditional terms for wine, as defined at section 2.3. The wine GI amendments made by this instrument are explained in section 7.13, whilst the non-GI provisions are set out in section 7.14.

7.13 The GI amendments in this instrument made to EU Regulations 2019/33 and 2019/34 are largely technical in nature, so that those regulations can function in GB law. These are generally consistent with the overarching principles of moving GI schemes into domestic law, as outlined at sections 7.1 to 7.8. But more specifically:

- Amendments to Commission Delegated Regulation (EU) 2019/33 concern the:
  - i. Admissibility of PDO and PGI applications and objections;
  - ii. Restrictions on the use of PDOs and PGIs;
  - iii. Products specifications for PDOs and PGIs and the procedure for making such amendments, including the procedure for standard and temporary amendments;
  - iv. Procedure for the cancellation of PDOs and PGIs, including the admissibility of cancellation requests;
  - v. Scrutiny provisions that apply to traditional terms and the modification and cancellation of traditional terms; and
  - vi. New provisions that apply to traditional terms and the modification and cancellation of traditional terms; and
- Amendments to EU Commission Implementing Regulation (EU) 2019/34 concern:
  - i. The scrutiny procedure for PDO and PGI applications;
  - ii. Operability amendments on logo provisions;
  - iii. The verification of compliance with a PDO or PGI product specification;
  - iv. Introduction of the domestic wines and traditional terms public registers;
  - v. Enabling traditional terms protected under a UK/third country continuity trade agreement to be added to the new domestic register of protected traditional terms; and
  - vi. Minor changes to the notification form to be submitted following an objection procedure.

7.14 The non-GI wine amendments allow the retained EU Regulations to work in GB. Specifically, EU Regulations concern arrangements on the marketing and trade in wine, oenological practices, controls and recordkeeping, and supplement the overarching rules contained in the CMO Regulation. These primarily:

- Specify the documents that must accompany wine products when imported into or out of GB, and when moved between GB and NI. This includes amending exemptions from the rules on documents that must accompany wine movements within GB (by amending Regulation (EU) 2018/273);
- Make operability amendments on non-PGI and non-PDO wines (by amending Regulation (EU) 2018/274) including:
  - i. Identifying who the competent authority is, by reference to existing provisions in the domestic Wine Regulations 2011;
  - ii. 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

- iii. The form, content and closure of the registers that need to be completed by wine operators.
- Make operability amendments relating to the production of wine, e.g. authorised and experimental oenological practices and analysis methods for determining the physical, chemical and organoleptic characteristics of grapevine products (by amending EU Regulations 2019/934 and 2019/935)
- Make operability amendments made to terminology on grape varieties, production methods, geographical units and presentation of grapevine products (by amending EU Regulations 2019/33).

Agri-Foods

- 7.15 In addition to establishment of the UK GI logo across the schemes (and the general GI functions set out at sections 7.1 to 7.8), this instrument includes further logo provisions that are specific to the agri-food scheme. These provide GB producers of established GIs a three-year adoption period before use of the new UK logos becomes mandatory and remove the obligation on those producers to use the EU GI logos once the domestic scheme is in operation. The instrument also includes other minor agri-food provisions, such as; allowing the product's 'single document' to be attached to the public GI register if the product specification cannot be obtained in English, and ensuring that UK applications pending at the end of the transition period, and transferred to the UK schemes, can be scrutinised by the Secretary of State.

Aromatised wines

- 7.16 Beyond the GI-specific provisions at the start of section 7, this instrument contains a small number of non-GI technical operability amendments, so that the EU aromatised wine regulations can function in GB law. These include:
- i. The definition, description, presentation and labelling of aromatised wine products
  - ii. Checks and verifications of aromatised wine products.

Applications to register aromatised wines are very infrequent, with only five such product names registered under the EU scheme, none of which are from the UK.

Revocations

- 7.17 This instrument omits similar provisions in three EU Exit SIs made in 2019, at Part 3 (S.I 2019/759, 2019/778 and 2019/865). All of these concerned operability amendments to retained EU law as a result of UK obligations under the Withdrawal Agreement. Also see section 9.1.

**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. This instrument is also made under the powers in section 8C of, and 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 As discussed in section 7.17, this instrument consolidates amendments made by S.Is. 2019/759, 2019/778 and 2019/865 in order to streamline the GI legislative framework, for the benefit of stakeholders and Parliament.

## **10. Consultation outcome**

- 10.1 A public consultation on GI schemes in the UK 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 elements of new UK GI schemes, and on the wider wine and spirit sector standards which have been carried forward via this instrument (along with the instruments referred to at section 6.4).
- 10.2 Specific questions were asked in the 2018 consultation, and in subsequent targeted stakeholder engagement, on the system for handling appeals against GI decisions made by the Secretary of State and for introducing a new scheme logos. On the appeals process, the majority of stakeholders supported our proposals for appeals to go via a First-tier Tribunal using General Regulatory Chamber Rules. On the logo, qualities that the designs should convey were provided and most respondents were content with the three-year adoption period, until use of the new logos became mandatory (on agri-food products). These aspects have all be taken forward in this instrument and our wider scheme design and guidance.
- 10.3 The full public 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>

## **11. Guidance**

- 11.1 Defra will publish guidance on the new UK GI schemes, for example how to apply for, amend or cancel a GI. This will be publicly available on GOV.UK on the day that the schemes enter into force, i.e. at the end of the transition period. Defra will also update existing guidance on applying to the EU schemes as Northern Ireland will continue to operate under EU GI rules for the duration of the Northern Ireland Protocol.

## **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, including the Defra Secretary of State.
- 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 instrument as part of its standard policy-making procedures and will ensure that the provisions are adhered to.

### **15. Contact**

- 15.1 Anna Bainbridge at the Department for Environment, Food and Rural Affairs, telephone: 0208 0266573 or email: [anna.bainbridge@defra.gov.uk](mailto:anna.bainbridge@defra.gov.uk) , can be contacted with any queries regarding the statutory instrument.
- 15.2 Ananda Guha, Deputy Director for Food Exports, Promotions and Partnerships, at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Parliamentary Under Secretary of State (Minister for Farming, Fisheries and Food), Victoria Prentis MP, Parliamentary Under-Secretary of State, 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 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 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.

		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. Appropriateness statement

- 1.1 Victoria Prentis MP, Parliamentary Under-Secretary of State, at the Department for Environment, Food and Rural Affairs, 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, etc.) (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 transition period. The amendments are predominantly technical in nature and do no more than is necessary to ensure that domestic law continues to function effectively. See sections 7.1 to 7.16 of this explanatory memorandum.

#### 2. Good reasons

- 2.1 Victoria Prentis MP, Parliamentary Under-Secretary of State, at the Department for Environment, Food and Rural Affairs 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 domestic law by the European Union (Withdrawal) Act 2018, will not work properly, and that it is appropriate, after the end of the transition period, for GB public authorities to exercise the legislative functions transferred by this instrument that are currently carried out by the Commission.

#### 3. Equalities

- 3.1 Victoria Prentis MP, Parliamentary Under-Secretary of State, at the Department for Environment, Food and Rural Affairs 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 Victoria Prentis MP, Parliamentary Under-Secretary of State, at the Department for Environment, Food and Rural Affairs 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, 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 Victoria Prentis MP, Parliamentary Under-Secretary of State, at the Department for Environment, Food and Rural Affairs, 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 2020”

- 5.2 For geographical indications this involves replacing an existing EU process, which is exercised through delegated legislation, with a power in GB 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 individual applications for geographical indications relating to agri-food, aromatised wines, spirit drinks and wine traditional terms by administrative means rather than by statutory instrument given that:

- 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;
- 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.



# **Annex 2**

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

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

- Commission Regulation (EC) No 2870/2000 of 19 December 2000 laying down Community reference methods for the analysis of spirits drinks.
- Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89.
- Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs.
- Commission Implementing Regulation (EU) No 716/2013 of 25 July 2013 laying down rules for the application of 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.
- 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.
- Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 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) No 664/2014 of 18 December 2013 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.
- Commission Implementing Regulation (EU) No 668/2014 of 13 June 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.
- Commission Delegated Regulation (EU) 2018/273 of 11 December 2017 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.

- Commission Implementing Regulation (EU) 2018/274 of 11 December 2017 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.
- Commission Delegated Regulation (EU) 2019/33 of 17 October 2018 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.
- Commission Implementing Regulation (EU) 2019/34 of 17 October 2018 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.
- Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 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.
- Commission Delegated Regulation (EU) 2019/934 of 12 March 2019 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 of 16 April 2019 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.
- Regulation (EU) 2019/1753 of the European Parliament and of the Council of 23 October 2019 on the action of the Union following its accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications.

