

EXPLANATORY MEMORANDUM TO
THE SPIRITS DRINKS, WINE AND EUROPEAN UNION WITHDRAWAL
(CONSEQUENTIAL MODIFICATIONS) (AMENDMENT) (EU EXIT)
REGULATIONS 2020

2020 No. 1636

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.
- 1.2 This Memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes changes to existing domestic legislation for wines and spirits to provide enforcement provisions for Regulations made by the European Commission to underpin the EU international agreements with the US and Mexico.
- 2.2 This instrument also makes minor technical changes to the law concerning Direct Payment schemes for farmers, so it continues to work effectively after the end of the transition period. These changes are needed because the EU law governing the Direct Payment schemes for farmers was incorporated into UK law when the UK left the EU, rather than at the end of the transition period. They make no policy change.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

- 3.1 This instrument comes into force as respects the spirit drinks and wine aspects on 30 December and as respects Direct Payments immediately before IP completion day, breaching the 21-day rule.
- 3.2 The spirit drinks and wine aspects which put certain enforcement provisions relating to Regulation (EC) No 936/2009 and Regulation (EC) No 1416/2006 in place are made under section 2(2) of the European Communities Act 1972 and should be made whilst the EU obligations in respect of those enforcement provisions apply to the whole of the UK.
- 3.3 The Direct Payments provisions are also made under powers which expire at the end of 2020 (see section 3(8) of the Direct Payments to Farmers (Legislative Continuity) Act 2020). These provisions amend the European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020 (S.I. 2020/1447) which were made on 4 December and come into force on IP completion day. The Direct Payments provisions in this instrument must come into force immediately before IP completion day to ensure that when S.I. 2020/1447 comes into force, it does not change the way in which the legislation governing Direct Payments (which was incorporated into domestic law on exit day) operates, ensuring continuity in that legislation so that Direct Payment schemes can continue to operate effectively across the UK.

- 3.4 Under section 3(2) of the Direct Payments to Farmers (Legislative Continuity) Act 2020, consent must be obtained from the devolved administrations before the Regulations can be made. Consent from Northern Ireland was not obtained until 23rd December and these Regulations were made and laid as soon as possible once consent was received.

Matters relevant to Standing Orders No. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

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

4. Extent and Territorial Application

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

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure, no statement is required.

6. Legislative Context

- 6.1 This instrument amends the Spirit Drinks Regulations 2008. Those Regulations put in place enforcement provisions underpinning the UK's implementation of EU law relating to spirit drinks. This instrument puts in place enforcement provisions in relation to the contravention of Article 1 of Commission Regulation (EC) No 936/2009, including a criminal offence. That Article specifies that certain product descriptions, originating in the USA and Mexico, may only be used for products produced in accordance with the laws and regulations of the third countries concerned. This provides the necessary enforcement for those spirit drinks agreements that are being transitioned as continuity agreements. Exit amendments will be made to the EU Regulations and the 2008 Regulations by other SIs, made using powers in the EU (Withdrawal) Act 2018.
- 6.2 The instrument also amends the Wine Regulations 2011. Those Regulations put in place enforcement provisions underpinning the UK's implementation of EU law relating to wine. This instrument puts in place enforcement provisions in relation to the contravention of Article 1 of Commission Regulation (EC) No 1416/2006, including the creation of a criminal offence. That Article prohibits the use of a US name of origin listed in the Annex to the Regulation (EC) No 1416/2006 to designate wines, unless it is used to designate a wine of that origin. Exit amendments will be made to the EU Regulations and domestic Regulations by other SIs, made using powers in the EU (Withdrawal) Act 2018.
- 6.3 The Direct Payments to Farmers (Legislative Continuity) Act 2020 incorporated the EU legislation governing the 2020 Common Agricultural Policy Direct Payment schemes into domestic law when the UK left the EU on exit day. The European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020 insert a new paragraph 2A into Schedule 8 to the European Union (Withdrawal) Act 2018, setting out how non-ambulatory references to EU legislation are to be dealt with from the end of the transition period. This instrument excludes the Direct Payments to Farmers (Legislative Continuity) Act 2020, legislation incorporated under it and associated

legislation from the new provision. This maintains the existing position regarding non-ambulatory references in that Direct Payments legislation.

7. Policy background

What is being done and why?

- 7.1 Commission Regulation (EC) 936/2009 specifies that product descriptions listed in its annex, originating in the USA and Mexico, may only be used for products produced in accordance with the laws and regulations of the third countries concerned (this is subject to the provisions of the wider EU spirit drinks regulations including labelling and composition). To ensure that this obligation can be fully implemented and enforced, amendments are being made to the Spirit Drinks Regulations 2008. This will create an additional offence for a contravention of Article 1 in 936/2009. The EU agreements with the USA and Mexico are being transitioned by the UK, so these amendments will also ensure that the UK agreements can be effectively enforced.
- 7.2 Regulation 1416/2006 provides a basis to require the protection of American Viticultural Areas (AVAs) listed in the Annex to the Regulation. The protection requires that AVAs may only be used for products of that specific viticultural origin. To ensure this obligation can be fully implemented and enforced, amendments are being made to the Wine Regulations 2011. This will create an additional offence for a contravention of Article 1 in Regulation 1416/2006. The EU Agreement on wine with the USA is being transitioned by the UK, so these amendments will also ensure that the UK agreement can be effectively enforced.
- 7.3 Direct Payments have been the main income-support schemes for farmers under the Common Agricultural Policy. The EU legislation governing the 2020 Direct Payment schemes was incorporated into UK law on 31 January 2020 rather than waiting until the end of the transition period. This was because Article 137 of the Withdrawal Agreement disapplied the Direct Payments Regulation for the UK for claim year 2020 when the UK left the EU. This instrument makes minor changes needed as a result of that separate earlier incorporation of the Direct Payments legislation into UK law. It makes changes so cross-references in Direct Payments legislation continue to work properly after the end of the transition period. The changes retain the *status quo*.

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

- 8.1 This instrument does not trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This instrument is not consolidating any other provisions.

10. Consultation outcome

- 10.1 No formal public consultation is deemed necessary for the wine and spirits elements because these deliver on existing obligations, but there has been ongoing engagement with representative industry bodies, including the Scotch Whisky Association and the Wine and Spirits Trade Association, who are supportive of these measures.
- 10.2 The Direct Payments changes have not been subject to consultation as these are minor changes which retain the *status quo*.

10.3 The changes to the wine and spirits regulations and the changes relating to Direct Payments have been shared with the Devolved Administrations, who are supportive of the need for this instrument. The changes relating to Direct Payments concern devolved issues and are being made with the consent of the Devolved Administrations.

11. Guidance

11.1 Defra is not producing any guidance about this instrument as it enforces existing obligations for the trade in spirits and wines that industry are fully aware of and maintains the *status quo* for Direct Payments to farmers.

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 it enforces existing obligations for the trade in spirits and wines that industry are fully aware of, and maintains the *status quo* for Direct Payments to farmers.

13. Regulating small businesses

13.1 The legislation applies to activities that are undertaken by small businesses.

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

14. Monitoring & review

14.1 The measures set out in this instrument are not expected to introduce any measurable impact on business. However, in accordance with better regulation principles, the effects of these measures on the sectors concerned will be subject to proportionate monitoring, evaluation and non-statutory review.

15. Contact

15.1 Spirit Drinks Policy: Jamie Mash at the Department for Environment, Food and Rural Affairs, Telephone: 0208 225 6405 or email: jamie.mash@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Wine Policy: Phil Munday at the Department for Environment, Food and Rural Affairs, Telephone: 0208 026 3885 or email: philip.munday@defra.gov.uk can be contacted with any queries regarding the instrument.

15.3 Direct Payments Policy: Claire Williams at the Department for Environment, Food and Rural Affairs, Telephone: 0208 026 2927 or email: claire.williams@defra.gov.uk can be contacted with any queries regarding the instrument.

15.4 Ananda Guha, Deputy Director for Food Exports, Promotion and Partnerships Division at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.5 Rt Hon Victoria Prentis (MP) at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.