



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2020**

DATE **07 October 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

The 2020 Regulations include provisions previously laid before the UK Parliament as an urgent “made affirmative” instrument, the Common Organisation of the Markets in Agricultural Products (Producer Organisations and Wine) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/1343). That instrument was made and laid on 14 October 2019. However, that instrument required approval by resolution of each House of Parliament within twenty-eight days beginning with the day on which the Regulations were made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days. The instrument was debated and approved by a House of Commons delegated legislation committee, but was not debated by the House of Lords within the requisite 28 day period, and in consequence those provisions needed to be re-made.

The 2020 Regulations amends the Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019 correcting minor errors. Defra decided not to revoke or remake this EU Exit SI due to the minor nature of the errors corrected by this instrument.

This instrument amends retained EU legislation and a UK statutory instrument relating to the Common Organisation of Markets (CMO) in areas which Defra considers are of reserved competence. It should be read in conjunction with The Agriculture (Payments) (Amendment, etc) (EU Exit) Regulations 2020 which relates to the CMO, specifically producer organisations in the fruit and vegetable sector, in areas of devolved competence.

The 2020 Regulations amend the following legislation

European legislation

- Commission Delegated Regulation (EU) No 880/2012 supplementing Council Regulation (EC) No 1234/2007 as regards transnational cooperation and contractual negotiations of

producer organisations in the milk and milk products sector;

- Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products;
- Commission Delegated Regulation (EU) No 2016/232 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to certain aspects of producer cooperation;
- Commission Delegated Regulation (EU) 2017/891 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the fruit and vegetables and processed fruit and vegetables sectors and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to penalties to be applied in those sectors;
- Commission Implementing Regulation (EU) 2017/892 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the fruit and vegetables and processed fruit and vegetables sectors; and
- This instrument also revokes all implementing acts adopted under Articles 97(3) and (4), 99, 106 and 115(2) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council that would otherwise form part of UK law by virtue of section 3(1) of the European Union (Withdrawal) Act 2018.

Domestic legislation

- The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019 (SI 2019/828).

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

Welsh Government officials are of the view that the 2020 Regulations contain provisions which are within the scope of the Senedd's legislative competence, and as such the related functions should not be solely conferred on the Secretary of State.

DEFRA take the view that amendments in the 2020 Regulations relate to reserved matters. On this basis, DEFRA intend to transfer various functions to the Secretary of State.

The purpose of the amendments

The retained EU regulations amended by this instrument relate principally to the CMO. The CMO is the framework for the market measures provided for under the CAP. The CMO was set up as a means of meeting the objectives of the CAP (Article 40 Treaty on the

Functioning of the European Union), in particular to stabilise markets, ensure a fair standard of living for agricultural producers and increase agricultural productivity. It has over time broadened out to provide a toolkit that enables the EU to:

- manage market volatility;
- incentivise collaboration between and competitiveness of agricultural producers; and
- facilitate trade.

The specific CMO measures amended by this instrument set out rules for producer organisations in the fruit and vegetable, and milk and milk products sectors; and wine imports and quality policy. They also conferred various legislative functions on the European Commission so that it could develop the technical details required to operate a specific regime. Examples of these functions include: setting eligibility criteria, establishing recognition criteria for producer organisations, establishing key dates for submission of claims for aid, setting out rules for contractual negotiations in the milk sector, and laying down details of checks to be carried out to enable producer cooperation.

This instrument makes the appropriate corrections to retained EU law to ensure that CMO rules will operate effectively at the end of the transition period. These amendments include corrections to a previous EU Exit SI. The approach when amending retained EU law has been to ensure that legislation remains as close to the current system as possible; changes are largely technical in nature.

This instrument makes a number of changes:

- Firstly, it omits and subsequently amends CMO rules relating to transnational producer groups, which will no longer be relevant in the UK at the end of the transition period;
- Secondly, it ensures that CMO rules relating to domestic producer organisations continue to function, preventing ambiguity or disruption for stakeholders in this sector; and
- Thirdly, it makes provision for wines to ensure arrangements for the protection and cancellation of Protected Designations of Origin (“PDOs”) and Protected Geographical Indications (“PGIs”) continue to function at the end of the transition period.

At the end of the transition period, without amendment, the retained EU legislation referenced above would contain European terms and requirements that might prevent the UK government and the Devolved Administrations from being able to deliver the market support schemes to the agricultural sector. Without these amendments the UK would not be

able to administer the Fruit and Vegetable Aid Scheme correctly, including carrying out checks on Producer Organisations recognised in the Aid Scheme and paying aid to those producers.

The 2020 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here:

<https://www.legislation.gov.uk/ukdsi/2020/9780348212761/contents>

Response to UK Government

The Welsh Government's position is that agriculture and the CAP are devolved and do not relate to the reserved matters under any heading in Schedule 7A to the Government of Wales Act 2006. However, the UK Government does not agree, and believes the subject matter of the 2020 Regulations is reserved. Therefore, the UK Government has not requested Welsh Ministerial consent.

The Welsh Government's view is that the above functions directly relate to the objectives of the CMO to improve the productivity of the agricultural sector and so raise the competitiveness of primary produce in the market place. The subject matter of agriculture and CAP is within the legislative competence of the Senedd (i.e. devolved). Under the terms of the Intergovernmental Agreement, the consent of Welsh Ministers should have been sought prior to laying the 2020 Regulations.

The Welsh Ministers have written to the UK Government to inform them of our view that it is not appropriate for UK Government Ministers to take unilateral decisions on matters which have a direct effect upon areas of devolved competence and Welsh Ministers do not plan to grant unilateral consent for this Statutory Instrument.