EXPLANATORY MEMORANDUM TO

THE COMMON ORGANISATION OF THE MARKETS IN AGRICULTURAL PRODUCTS (MARKETING STANDARDS AND ORGANIC PRODUCTS) (TRANSITIONAL PROVISIONS) (AMENDMENT) REGULATIONS 2021

2021 No. 1396

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument will amend retained European Union ("EU") and domestic legislation to extend the 'grace periods' concerning import requirements that apply to certain marketing standards sectors (i.e., hops and hop products, poultrymeat, fruit and vegetables) exported by the EU to Great Britain ("GB"), as well as to those that apply to hops and fruit and vegetables exported by approved third countries into GB. In addition, this instrument will extend the grace periods applying to import requirements for organic products exported by the EU, European Economic Area states and Switzerland to GB. These amendments are being made to bring the introduction of marketing standards and organic import requirements in line with the newly revised timetable for sanitary and phytosanitary (SPS) border controls which was announced in a written Ministerial statement on 14 September 2021.

2.2 The legislation amended by this instrument is:

- Retained Council Regulation (EC) No 834/2007 on organic production and labelling of organic products (EUR 2007/834);
- Retained Commission Regulation (EC) No 543/2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat (EUR 2008/543);
- Retained Commission Regulation (EC) No 1235/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2207 as regards the arrangements for imports of organic products from third countries (EUR 2008/1235);
- Retained Commission Regulation (EC) No 1295/2008 on the importation of hops from third countries (EUR 2008/1295);
- Retained Commission Implementing Regulation (EU) No 543/2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of fruit and vegetables and processed fruit and vegetables sectors (EUR 2011/543);
- Regulation (EU) No 1308/2013 of the European Parliament and Council establishing a common organisation of the markets in agricultural products (EUR 2013/1308);
- The Hops Certification Regulations 1979, in respect of Great Britain (S.I. 1979/1095).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent and application of this instrument is the same as the extent and application of the legislation being amended.

5. European Convention on Human Rights

5.1 Minister of State for Farming, Fisheries and Food, Victoria Prentis MP has made the following statement regarding Human Rights:

"In my view the provisions of the "Common Organisation of the Markets in Agricultural Products (Marketing Standards and Organic Products) (Transitional Provisions) (Amendment) Regulations 2021" are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument amends retained EU law and domestic legislation, referenced in paragraph 2.2, to extend the grace periods concerning import requirements for organics and marketing standards for hops, poultrymeat and fruit and vegetables.

6.2 Under section 3 of the European Union (Withdrawal) Act 2018, the EU Regulations referenced in paragraph 2.2 were incorporated into domestic law at the end of the Transition Period, as retained EU legislation. The referenced retained EU legislation was amended at the end of the Transition Period to insert transitional provisions relating to the commencement of GB marketing standards documentary checks for imports, and the domestic legislation relating to certification of hops was similarly amended. These transitional arrangements were designed to provide industry sufficient time to prepare for import controls and new GB marketing standards documentary checks following the UK's withdrawal from the EU. The transitional arrangements are linked to the conditions under which imported products are considered to have an equivalent level of conformity to GB products.

6.3 This instrument extends the transitional arrangements in order to take into account the ongoing pressures on supply chains due to the Covid-19 pandemic, and ongoing pressures on businesses as a result.

7. Policy background

What is being done and why?

7.1 This instrument amends the transitional arrangements relating to import controls for organic products and marketing standards for poultrymeat, hops and fruit and vegetables to provide sufficient time for businesses to recover from the impact of the Covid-19 pandemic, and pressures on global supply chains. On 14 September 2021, the Government announced another deferment of SPS border controls, to be introduced on 1 July 2022. This instrument amends the transitional arrangements in legislation to align with the introduction of SPS border controls on 1 July 2022. Explanations

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

7.2 Regulation (EU) No 1308/2013 ("the CMO") is the framework for the functioning and administration of the Common Organisation of Agricultural Markets and is part of Pillar 1 of the Common Agriculture Policy ("CAP"). CMO was set up as a means of meeting the objectives of the CAP (Article 40 Treaty on the Functioning of the European Union), to stabilise markets, ensure a fair standard of living for agricultural producers and increase agricultural productivity. It has broadened out to provide a toolkit that enables the EU to:

(a) manage market volatility

(b) incentivise collaboration between and competitiveness of agricultural producers; and

(c) facilitate trade.

7.3 Marketing Standards establish detailed rules with regard to the quality of agricultural products and providing product information to consumers. They are intended to make sure that products offered to consumers are accurately and consistently labelled, of acceptable quality, and that unsatisfactory produce is kept off the market. The CMO sets out general marketing standards for agricultural products, which is supplemented by Regulations setting detailed standards relating to marketing requirements, certification requirements and import requirements for each agricultural product. Organic food is strictly regulated by retained Council Regulation (EC) No 834/2007 and retained Commission Regulation (EC) No 1235/2008 which provide for the production, processing, labelling, inspection and import requirements for those products.

7.4 Transitional provisions in the legislation listed in paragraph 2.2 set out grace periods which were inserted into the legislation by EU Exit SIs to allow businesses additional time to prepare for the introduction of the relevant certification and inspection requirements, thus support trade, and minimise border disruptions, following the UK's withdrawal from the EU. These were in line with the wider plans outlined in the Government's Border Operating Model. Implementation of some marketing standards and organics requirements remain dependent on Border Control Posts being in operation, while for others there is a dependency on customs import declarations.

7.5 The grace periods were subsequently amended by The Common Organisation of the Markets in Agricultural Products (Transitional Arrangements) (Amendment) Regulations 2021 (S.I. 2021/652) to align the grace periods with the revised timetable for the introduction of SPS border controls, announced by Ministerial Statement on 11 March 2021.

7.6 The grace periods in respect of imports of organic products, poultrymeat and hops come to an end on 1 January 2022, while the grace period in respect of imports of fruit and vegetables comes to an end on 1 March 2022.

Why is it being changed?

7.7 In a Written Ministerial statement on 14 September 2021, a further deferral of SPS requirements for imports was announced, to give businesses more time to recover from the impact of the Covid-19 pandemic, with the introduction of controls now occurring on 01 July 2022.

7.8 The introduction of marketing standards requirements for EU imports following the end of the Transition Period was in line with the Government's phased approached set

out in the Border Operating Model and the implementation of SPS controls. Following the 14 September 2021 announcement, the existing transitional provisions for marketing standards and organics are being changed in order to align with the revised timeframe for SPS border checks.

What will it now do?

7.9 This instrument will implement this change by making technical amendments to the transitional arrangements in the relevant retained EU and domestic legislation regarding hops and hop products, poultrymeat, fruit and vegetables and organic products. In most cases, the end of the transitional provisions is 01 January 2022 with the exception of Fruit and Vegetables which is 01 March 2022. Both dates will be amended by this instrument to 01 July 2022.

7.10 These changes have been communicated to stakeholders. There are implications associated with not delivering this instrument in time for 01 January 2022. EU exports of hops, and organic products to GB would be halted, while also attracting a considerable amount of media attention and controversy, compromising the UK's reputation as a trading partner.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because the grace periods in retained EU legislation in respect of imports from the EU of organic products, poultrymeat, hops and fruit and vegetables are being amended to align with the introduction of Marketing Standards and Organic controls on imported EU goods.

9. Consolidation

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

10. Consultation outcome

10.1 No consultation was undertaken for the amendments being made under this instrument given that they are technical in nature.

10.2 Defra has engaged with industry representatives to familiarise them with the proposed changes to import requirements made under this instrument.

10.3 Defra has also engaged with Devolved Administrations in order to inform and familiarise them with the changes introduced by this instrument ahead of laying.

11. Guidance

11.1 Defra is not producing specific guidance on this instrument, as this only makes technical amendments to the retained EU and domestic legislation. However, the Government has published guidance on the Border Operating Model and the relevant changes to import requirements introduced by this instrument have been published on GOV.UK.

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 A full Impact Assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

13. Regulating small business

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

13.2 No disproportionate impacts are foreseen to affect small or micro businesses. The transitional provisions relating to documentation requirements or processes are being amended in order to provide extended time for businesses to adjust.

14. Monitoring & review

14.1 As this instrument amends transitional provisions which will cease to have effect on 1 July 2022, no statutory review clause is required. Defra and its agencies will monitor and review the impact of the instrument as part of its standard policymaking procedures and will ensure that the provisions are adhered to.

15. Contact

15.1 James Wormald at the Department for Environment, Food and Rural Affairs Telephone: 07795 496 133 or email: James.Wormald@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Balwinder Dhoot, Deputy Director for Food, Farming Sectors and Trade, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Victoria Prentis MP at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.