EXPLANATORY MEMORANDUM TO

THE COMMON ORGANISATION OF THE MARKETS IN AGRICULTURAL PRODUCTS (MARKETING STANDARDS AND ORGANIC PRODUCTS) (TRANSITIONAL PROVISIONS) (AMENDMENT) REGULATIONS 2023

2023 No. 1246

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 His Majesty.

2. Purpose of the instrument

2.1 This instrument will amend retained European Union ("EU") and domestic legislation in order to extend the grace periods concerning import requirements that apply to certain agricultural products. It will extend the grace periods applying to import requirements for (i) hops and hop products exported by the EU and certain third countries to Great Britain ("GB"), (ii) poultrymeat with optional indications exported from the EU to GB and (iii) organic products exported from the EU, European Economic Area ("EEA") states and Switzerland to GB. These amendments are being made in light of changes to the timeline for the introduction of the new border controls regime set out in the final version of the Border Target Operating Model (BTOM) published on 29 August 2023, which mean it is not appropriate to introduce marketing standards and organic import requirements from 1 January 2024 as previously planned. These amendments are also made in light of Government policy to review the fitness for purpose of retained EU law (REUL), as referenced in the Retained EU Law (Revocation and Reform) Act 2023, in order to make sure our laws work for the people who use them and support economic growth. Extending grace periods beyond those set in the BTOM will allow time to review the relevant marketing standards regulations, including related import requirements, with a view, amongst other things, to reducing regulatory burdens on businesses. Further, these amendments will allow time to consider whether an electronic solution to existing organic import processes can be found to ease the burden on businesses when organic import requirements are introduced.

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 834/2007 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 Regulation (EU) No 1308/2013 of the European Parliament and of the 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 of this instrument (that is the jurisdiction(s) which the instrument forms part of the law of) is Great Britain.

4.2 The application of this instrument (that is where the instrument produces a practical effect) is Great Britain.

5. European Convention on Human Rights

5.1 Minister of State for Food, Farming, and Fisheries, Mark Spencer 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 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument amends the retained EU law and domestic legislation referenced in paragraph 2.2 in order to extend the grace periods concerning import requirements for organic products, hops and hop products, and poultrymeat with optional indications.

6.2 Under section 3 of the European Union (Withdrawal) Act 2018 ("EUWA"), the EU legislation listed in paragraph 2.2 was retained at the end of the Transition Period (at 11pm on 31 December 2020). The Hops Certification Regulations 1979 were retained in UK law under section 2 of the EUWA.

6.3 The listed legislation was amended at the end of the Transition Period to insert transitional provisions relating to the commencement of the use of GB marketing standards documentation for imports. These transitional arrangements were designed to provide industry with 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 concern the conditions under which imported products are considered to have an equivalent level of conformity to GB products.

6.4 These transitional arrangements have been extended several times, most recently to 31 December 2023 in order to align with the Government's wider policy on border controls as set out in the Minister for Brexit Opportunities and Government Efficiency's Written Ministerial Statement (WMS) of 28 April 2022. Following consultation, the BTOM published in August 2023 set out the new border control regime foreseen in the WMS will be introduced from the end of January 2024.

6.5 This instrument will extend existing grace periods to take account of both the new BTOM timeline as well as the introduction of the Retained EU Law (Revocation and Reform) Act 2023 which provides a new framework to reform retained EU legislation. Further, it will allow time to consider how existing organic import processes can move toward an electronic solution to ease the burden the current system places on businesses.

7. Policy background

What is being done and why?

7.1 On 29 August 2023 the Government published the final BTOM which set out the new border controls regime, including an updated timeline for the phased introduction of sanitary and phytosanitary (SPS) import controls on imports from the EU. The revised timeline means it is not appropriate to introduce marketing standard and organic import controls from 1 January 2024 as previously planned. This instrument therefore extends grace periods, with the revised date ending on 31 January 2025 set to allow time to review marketing standards import requirements and explore what potential improvements might be implemented to the existing organic import processes, with a view to reducing friction and costs for businesses and consumers.

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 EU's Common Agriculture Policy ("CAP"). The CMO was retained in UK law under section 3 of the EUWA. The CMO was set up as a means of meeting the objectives of the CAP (Article 40 of the 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:

i. manage market volatility

ii. incentivise collaboration between and competitiveness of agricultural producers; and

iii. facilitate trade.

7.3 Marketing standards establish detailed rules with regards to the quality of agricultural products and provide product information to consumers. They are intended to make sure that products offered to consumers are accurately and consistently labelled, are of acceptable quality and that unsatisfactory produce is kept off the market. The CMO (as retained in UK law following EU exit) sets out general marketing standards for agricultural products, which are supplemented by regulations setting out detailed standards relating to marketing requirements, certification requirements and import requirements for each agricultural product.

7.4 Organic food is regulated by retained Council Regulation (EC) No 834/2007 and retained Commission Regulations (EC) No 889/2008 (not amended by this instrument) and (EC) No 1235/2008: these provide for the production, processing, labelling, inspection and import requirements for organic products.

7.5 Transitional provisions in the legislation listed in paragraph 2.2 set out grace periods to allow businesses additional time to prepare for the introduction of the relevant certification and inspection requirements, supporting trade, and minimising border disruptions following the UK's withdrawal from the EU. These grace periods aligned with the wider plans outlined in the Government's Border Operating Model.

7.6 The grace periods were subsequently amended by:

i. 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

ii. The Common Organisation of the Markets (Marketing Standards and Organics Products) (Transitional Provisions) (Amendment) Regulations 2021 (S.I. 2021/1396); and

iii. The Common Organisation of the Markets in Agricultural Products (Marketing Standards and Organic Products) (Transitional Provisions) (Amendment) Regulations 2022 (S.I. 2022/609).

7.7 The grace periods set by these instruments in respect of imports of hops from the EU and certain third countries, organic products from the EU, EEA states and Switzerland, and of poultrymeat with optional indications from the EU, end on 1 January 2024.

Why is it being changed?

7.8 These amendments are being made in light of changes to the timeline for the introduction of the new border controls regime set out in the final version of the BTOM published on 29 August 2023, which mean it is not appropriate to introduce marketing standards and organic import requirements from 1 January 2024 (i.e. ahead of the dates for the introduction of wider import requirements set out in the BTOM) as previously planned. These amendments are also made in light of Government policy to review the fitness for purpose of REUL, as referenced in the Retained EU Law (Revocation and Reform) Act 2023, in order to make sure our laws work for the people who use them and support economic growth. Extending grace periods beyond those set in the BTOM will allow time to review the relevant marketing standards regulations, including related import requirements, with a view, amongst other things, to reducing regulatory burdens on businesses. Further, these amendments will allow time to consider whether an electronic solution to existing organic import processes can be found to ease the burden on businesses when organic import requirements are introduced.

What will it now do?

7.9 This instrument will make technical amendments to the transitional arrangements in the relevant retained EU and domestic legislation regarding hops and hop products, poultrymeat with optional indications, and organic products. The transitional provisions brought about by the Common Organisation of the Markets in Agricultural Products (Marketing Standards and Organic Products) (Transitional Provisions) (Amendment) Regulations 2022 (S.I. 2022/609) otherwise end on 31 December 2023. This instrument will extend the grace periods to end on 31 January 2025.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the EUWA but relates to the withdrawal of the United Kingdom from the European Union. This is because it amends the grace periods in the legislation listed at paragraph 2.2, in respect of imports from the EU of organic products, poultrymeat with optional indications and hops, to align with the introduction of wider border 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 communicated the changes to stakeholders to allow for familiarisation with the changes to import requirements made by this instrument.

10.3 Defra has engaged with the 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 it only makes technical amendments to the retained EU and domestic legislation. However, the Government has published the final BTOM, and the relevant changes to import requirements made by this instrument have been reflected in the sector specific guidance available 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.

14. Monitoring & review

14.1 As this instrument amends transitional provisions which will now end on 31 January 2025, 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 Nick Gray at the Department for Environment, Food and Rural Affairs, (telephone: 07557 191330 or email: Nick.Gray@defra.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Gill Laishley, Deputy Director for Farming and Primary Processing, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

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