EXPLANATORY MEMORANDUM TO

THE ORGANIC PRODUCTION (AMENDMENT) REGULATIONS 2022

2022 No. 360

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 The purpose of this SI is to extend the dates until which derogations may be authorised for the use of non-organic pullets (young chickens) and non-organic gellan gum in organic production.

2.2 The derogation for pullets expired on 31st December 2020, while that for gellan gum expired on 31st December 2021. Since there is currently insufficient supply of organic pullets and gellan gum available to the market in Great Britain, this SI extends both derogations until 31 December 2022. This will allow organic production to continue undisrupted while the market develops.

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 is England and Wales and Scotland.

4.2 The territorial application of this instrument is England, Wales and Scotland.

5. European Convention on Human Rights

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

"In my view the provisions of the Organic Production (Amendment) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument makes amendments to retained EU legislation.

6.2 Under Article 22 of Council Regulation (EC) No 834/2007, derogations to the rules of organic production may be authorised where certain criteria are met. These criteria include a lack of availability of organically reared livestock or of organic seeds or ingredients.

6.3 These derogations are implemented by Commission Regulation (EC) No 889/2008. One of these permits the use of non-organic pullets when organically reared pullets are unavailable. Since there continues to be a shortage of organically reared pullets on the market, this instrument extends the derogation to 31 December 2022.

6.4 Annex 8 of Regulation 889/2008 requires gellan gum, a food additive, to be derived from organic sources from 1 January 2022. Since there are still insufficient sources of organic gellan gum available to producers in Great Britain, this instrument extends that derogation until 1 January 2023.

7. Policy background

What is being done and why?

7.1 Derogations which allow the use of non-organic pullets and non-organic gellan gum in organic production are being extended.

Explanations

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

7.2 Commission Regulation (EC) No 889/2008 permitted derogations for the use of non-organic pullets to be granted until 31 December 2020 and for non-organic gellan gum until 31 December 2021.

Why is it being changed?

7.3 Pullets are young chickens which will mature into laying hens. However, there are insufficient organically reared pullets for egg production available, both in terms of quality and quantity, on the GB market.

7.4 Non-organic gellan gum, commonly used to bind, stabilise or texturize processed food, has been permitted as an additive in the processing of organic foods since 2017; however, this permission is time-limited in Regulation (EC) No 889/2008. Because there continues to be an insufficient supply of organic gellan gum available to the GB market, organic operators may face disruption if this derogation is not extended, as they will struggle to source it in its organic form.

What will it now do?

7.5 The dates until which both derogations may be authorised will be extended to 31 December 2022.

8. European Union Withdrawal and Future Relationship

8.1 This instrument amends retained European legislation but does not use powers or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This is not a consolidating instrument.

10. Consultation outcome

10.1 Targeted consultation of the Scottish and Welsh administrations was carried out via a meeting of the organics Four Nations Working Group. Scotland and Wales expressed support for the measure. This amendment to retained Regulation (EC) No 889/2008 will not apply to Northern Ireland. This is because Regulation (EU) No 2018/848 came into force in NI on 1 January 2022, repealing Regulation (EC) No 889/2008. Despite this instrument not applying to NI, we do not anticipate that this will substantially disadvantage NI industry. Discussions between all four nations and officials will continue as required.

10.2 The proposal has also been approved by the United Kingdom Organic Certifiers Group (UKOCG), which is the main industry stakeholder group for organics.

10.3 Due to the limited scope of this statutory instrument, a full public consultation was not required.

11. Guidance

11.1 The extension of these derogations will be communicated to the GB organic control bodies, who will disseminate the information to operators. As this amendment is made with the consent of the Devolved Administrations, they are aware of the impacts it will have. No further guidance is needed.

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 there is a very low level of impact on businesses: this SI will permit operators to continue using non-organic pullets, or gellan gum, as they have done.

13. Regulating small business

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

13.2 No specific action is proposed to minimise regulatory burdens on small businesses, as this statutory instrument does not alter the regulatory burden. Extending these derogations will prevent cost impacts, which could disproportionately affect small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is continued liaison with the relevant stakeholders to ensure the legislation is working as intended.

14.2 The instrument does not include a statutory review clause, because the expected impact on businesses is significantly below £5 million and a review would be disproportionate.

14.3 The impacts of this legislation will be reviewed by Defra in 2022 when deciding whether it will be necessary to further extend the derogations.

15. Contact

15.1 Megan Young at the Department for Environment, Food and Rural Affairs Telephone: 020 8026 5237 or email: megan.young@defra.gov.uk can be contacted with any queries regarding the instrument.

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

15.3 Rt Hon Victoria Prentis MP, Minister of State for Agriculture, Fisheries and Food at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.