EXPLANATORY MEMORANDUM TO

THE ORGANIC PRODUCTION (ORGANIC INDICATIONS) (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. 1669

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 ensures that organic rules are updated in preparation for the end of the transition period by amending deficiencies within the retained EU legislation.

Explanations

What did any relevant EU law do before exit day?

2.2 Organic food has been strictly regulated in the UK and in other EU Member States by Council Regulation (EC) No 834/2007 and Commission Regulations (EC) Nos 889/2008 and 1235/2008 ("the Regulations"). The Regulations set out the requirements for organic production, processing, labelling and imports, and the inspection systems that must be in place to ensure the requirements are met. The Regulations apply to organic food, feed and vegetative propagating material or seeds for cultivation.

Why is it being changed?

2.3 In accordance with the European Union (Withdrawal) Act 2018, the existing EU Regulations relating to organic policy will be retained into domestic law and continue to apply at the end of the transition period.

2.4 This instrument amends retained Council Regulation (EC) No 834/2007 to ensure organic labelling regulations work in domestic law. This instrument removes the mandatory requirement for the EU organic logo to be used in Great Britain (GB) and sets out rules for the use of any United Kingdom (UK) organic logo when developed. The instrument also amends the statement of agricultural origin to reference the UK and provides that this must be used on GB organic products even where there is no UK logo.

2.5 As well as the no deal instruments laid in 2019, four further instruments covering organic policy have been laid recently. The Organic Products (Production and Control) (Amendment) (EU Exit) Regulations 2020, the Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2020, the Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2020, and the Agricultural Products, Food and Drink (Amendment etc.) etc (EU Exit) (No. 2)

Regulations 2020. This final instrument provides that the UK recognise the EU and EEA as equivalent until 31 December 2021 for the purposes of Commission Regulation 1235/2008 to ensure continuity of trade.

What will it now do?

2.6 This instrument will use powers in the European Union (Withdrawal) Act 2018 to make operability amendments to retained EU legislation to organics to ensure that it remains coherent and continues to function as intended after the UK has left the EU, in accordance with the terms of the Northern Ireland Protocol. As such, whilst this will provide clarity to stakeholders, the amendments are unlikely to have any noticeable impact on the organic sector.

2.7 The current organic standards will be maintained at the end of the transition period. The certification and traceability of organic food and feed products will continue to be required.

2.8 Further detail on the specific changes being made by these instruments is in Section 7 and Annex 2 of this Explanatory Memorandum.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument is being made under the procedure set out in paragraph 5 of Schedule 7 to the European Union (Withdrawal) Act 2018 and comes into force on the day after the day on which it is made, by reason of urgency.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 24 of the European Union (Withdrawal) Act 2018) and the extent and application is as detailed in section 4 below.

4. Extent and Territorial Application

4.1 The territorial extent and application of this instrument matches the extent and application of the retained law being amended in regulation 2.

4.2 As regards the retained law amended by this instrument, this is incorporated into domestic law under section 3 of the European Union (Withdrawal) Act 2018 save insofar as it applies to Northern Ireland for the purposes of the Protocol. Accordingly, this instrument will be of no practical application in Northern Ireland as the Protocol instead applies the EU law provisions in Northern Ireland.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State of 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 (Organic Indications) (Amendment) (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument makes amendments to retained EU legislation. Under section 3 of the European Union (Withdrawal) Act 2018, existing EU Regulations concerning organics (Regulation (EC) No 834/2007, Regulation (EC) No 889/2008 and Regulation (EC) No 1235/2008) were incorporated into domestic law at the end of the Transition Period, as amended by the instruments referred to in section 2.6. This instrument further amends Regulation 834/2007. The EU Regulations will continue to have effect in Northern Ireland under the Protocol.

7. Policy background

What is being done and why?

7.1 As the UK withdrew from the EU on 31 January 2020, with an agreement in place, the retained EU legislation needs to be updated to reflect this and the provisions of the European Union (Withdrawal) Act 2018.

7.2 The organic sector is worth £2.3bn per annum to the UK economy with exports worth around £250m. The UK has over 6000 organic operators, many farmers and small and medium-sized enterprises who would be particularly vulnerable if the retained EU organic legislation were not updated.

7.3 Organic food and feed must be inspected and certified within the scope of a regulated framework. These standards apply to the production of food, animal feed, livestock (including bees and farmed fish) and any food products marketed as 'organic'. They stipulate that organic food must originate from businesses registered and approved by organic control bodies on the basis of a rigorous annual inspection.

7.4 This instrument corrects deficiencies in these regulations in regard to labelling in retained EU legislation.

7.5 The certification and traceability of organic food and feed products will continue to be required. However, use of the EU organic logo will no longer be a legislative requirement for organic producers in GB. The instrument corrects this and sets out rules for the use of any UK organic logo when developed. The instrument also amends the statement of agriculture origin to reference the UK and provides that this must be used on GB organic products even where there is no UK logo.

7.6 An explanation of the amendments being made within these instruments can be found in Annex 2 of this Explanatory Memorandum.

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

8.1 This instrument is being made using the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU legislation to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. This instrument is also made under paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 Defra has no plans currently to consolidate the legislation that is amended by this instrument.

10. Consultation outcome

10.1 No consultation has been undertaken for the amendments being made under this instruments but Defra has engaged with the United Kingdom Organic Certifiers Group (UKOCG), as industry representatives, to familiarise them of the proposed amendments that will be made by this instrument and on the future implementation of the UK Regulations following the end of the transition period.

10.2 Defra has also engaged the Devolved Administrations on its approach to retained EU legislation under the European Union (Withdrawal) Act 2018, including on this instrument, to familiarise them with the legislation ahead of laying. Defra has worked collaboratively with the Devolved Administrations to create this instrument and has fully involved the Devolved Administrations in discussion on the measures in this instrument. Defra has also sought formal agreement from the Devolved Administrations for areas that intersect with devolved policy. This is in line with the Government's commitment that it will not normally use the powers set out in Section 8 of the European Union (Withdrawal) Act 2018 to make provisions that could be made by a Devolved Administration without the agreement of the relevant Devolved Administration(s).

11. Guidance

11.1 The changes made by this instrument are included in guidance shared with the UK organic sector. Defra will continue to engage with them to ensure they are aware of these changes.

12. Impact

12.1 There is expected to be no, or no significant, impact on business, charities or voluntary bodies.

12.2 An Impact Assessment has not been prepared for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

12.3 As explained above these changes to the Regulation are intended to maintain the status quo in terms of business's regulatory obligations. There should be no significant changes in business practices and no significant changes in the direct costs faced by businesses as a direct result of this instrument. As a result, Defra is confident that the changes introduced by this instrument fall below the £5m per annum threshold for net direct costs to business.

13. Regulating small business

13.1 The Regulations apply to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to retain the EU Regulations relating to organic policy as they apply directly before the end of the transition period. This instrument ensures the Regulations will be operable and therefore, any direct impact will be minimal.

14. Monitoring & review

14.1 The approach to monitoring this legislation is continued liaison with the organic sector to ensure there are no unintended consequences.

14.2 As this instrument is made under the EU (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Benjamin Marsh at the Department of the Environment, Food and Rural Affairs Telephone: 073854148231 or email: Benjamin.marsh@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Ruhena Ahmed, 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, Parliamentary Under Secretary of State for Agriculture, Fisheries and Food, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

1.1 The Parliamentary Under Secretary of State for Agriculture, Fisheries and Food, Rt Hon Victoria Prentis MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Organic Production (Organic Indications) (Amendment) (EU Exit) Regulations 2020 does no more than is appropriate".

1.2 This is the case because: the amendments to domestic legislation and instruments are the minimum required to make the legislation operable.

2. Good reasons

2.1 The Parliamentary Under Secretary of State for Agriculture, Fisheries and Food, Rt Hon Victoria Prentis MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

2.2 These are: the amendments made to the legislation are the minimum required to make the legislation operable.

3. Equalities

3.1 The Parliamentary Under Secretary of State for Agriculture, Fisheries and Food, Rt Hon Victoria Prentis MP has made the following statement:

"The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006, or the Equality Act 2010 or subordinate legislation made under those Acts".

3.2 The Parliamentary Under Secretary of State for Agriculture, Fisheries and Food, Rt Hon Victoria Prentis MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Victoria Prentis MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

5. Urgency

5.1 The Parliamentary Under Secretary of State for Agriculture, Fisheries and Food, Rt Hon Victoria Prentis MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view by reason of urgency, it is necessary to make the Organic Production (Organic Indications) (Amendment) (EU Exit) Regulations 2020, without a draft of the instrument containing the regulations being laid before, and approved by a resolution of, each House of Parliament."

5.2 This is because: it is important to make the instrument and bring the provisions into force to ensure that the retained legislation is made operable as soon as possible after the end of the transition period.