

EXPLANATORY MEMORANDUM TO
THE ORGANIC PRODUCTION AND CONTROL (AMENDMENT) (EU EXIT)
REGULATIONS 2019

2019 No. [XXX]

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 Act.

2. Purpose of the instrument

2.1 This instrument ensures that organic standards remain the same as now for organic operators within the UK 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) 834/2007 and Commission Regulations (EC) 889/2008 and 1235/2008. These 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 Through the European Union (Withdrawal) Act 2018, the existing EU organic regulations will be retained in UK law and continue to apply after we have left the EU.

2.4 Parts of this legislation, for example, references to the UK as a ‘Member State’ - will not be operable when applied in a UK-only context. This instrument makes changes to ensure that the rolled over regulations work in UK law.

2.5 In addition to this instrument, three further instruments covering organic policy will be laid prior to exit day. A summary of these is in Annex 2.

What will it do now?

2.6 The current organic standards will be maintained post EU Exit. The certification and traceability of organic food and feed products will continue to be required. This instrument will ensure the continued regulation and certification of organic products to the current standards applicable within the UK.

2.7 A summary of amendments made in the Organic Production and Control (Amendment) (EU Exit) Regulations 2019 is in Annex 2.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments

3.1 None.

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 and Northern Ireland.
- 3.3 This instrument has effect in the whole of the United Kingdom and, as such, the English Votes for English Laws procedure is not applicable to this instrument.

4. Extent and Territorial Application

- 4.1 The territorial extent and application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP has made the following statement regarding Human Rights:

“In my view the provisions of The Organic Production and Control (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Through the European Union (Withdrawal) Act 2018, existing EU Regulations (Regulation (EC) No 834/2007, Regulation (EC) No 889/2008 and Regulation (EC) No 1235/2008) will be converted into UK law and continue to apply after we have left the EU. The amendments made to these Regulations by this instrument will ensure the operability of these Regulations on exit day.

7. Policy background

What is being done and why?

- 7.1 This instrument ensures that retained EU organic legislation is operable in the UK on the day the UK leaves the EU.
- 7.2 The UK has over 6000 organic operators, many farmers and Small and Medium-sized Enterprises who would be particularly vulnerable. It can take up to three years to convert to organic following which organic products attract a price premium.
- 7.3 This instrument applies to agriculture which is a transferred matter for Northern Ireland under section 4 of the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for EU Exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent of a Northern Ireland Executive. With exit day a few weeks away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for EU Exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The 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 Annex 1 of 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 This instrument has been developed in conjunction with the Devolved Administrations by way of regular meetings and *ad-hoc* communications.

10.2 We have worked with the United Kingdom Organic Certifiers Group (UKOCG) as industry representatives on this and future implementation of the UK regulations once we have left the EU.

11. Guidance

11.1 This instrument does not introduce any new obligations. We will continue to engage with the UK organic sector.

12. Impact

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

12.2 There is likely to be some impact on the public sector to ensure operability of systems on Day 1.

12.3 As explained above these changes in 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 result, we are 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 legislation applies 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 organic Regulations as they apply directly before EU exit day. This instrument ensures the regulations will be operable in the UK and therefore, any direct impact will be minimal.

14. Monitoring & review

14.1 The approach to monitoring of 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 Andy Read at the Department for the Environment, Food and Rural Affairs Telephone: 07900 164722 or email: andy.read@defra.gov.uk can be contacted with any queries regarding the Instrument.

15.2 Maggie Charnley at the Department for the Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

Annex 1

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 2018 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 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence.	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
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 s. 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 1972.	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA 1972, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.

<p>Scrutiny statement where amending regulations under s. 2(2) ECA 1972</p>	<p>Paragraph 16, Schedule 8</p>	<p>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 1972.</p>	<p>Statement setting out:</p> <ul style="list-style-type: none"> 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.
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Part 2

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

1. Appropriateness statement

- 1.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- “The Organic Production and Control (Amendment) (EU exit) Regulations 2019 do no more than is appropriate”.
- 1.2 This is the case because: the amendments to domestic legislation are the minimum required to make the legislation operable and are not significant in that they maintain current regulatory standards.

2. Good reasons

- 2.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice 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 Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement(s):
- “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 Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- “In relation to the draft Instrument, I, George Eustice 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.

Annex 2

Associated legislation being laid prior to exit day

- To cover parts of the Regulations which are reserved matters under the devolution settlements.
- To cover devolved transfer of functions provisions.
- To cover the necessary domestic legislation.

Summary of amendments made in the Organic Production and Control (Amendment) (EU Exit) Regulations 2019

<p>Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products.</p>	<p>This Regulation sets out the organic production framework for the production and labelling of organic food and feed. Minor technical amendments ensure that this Regulation has effect for the UK organic sector after EU Exit.</p> <p>There is one instance where ‘shall’ has been changed to ‘may.’ This is in Article 29. The Instrument amends a duty in this legislation where the duty has already been carried out by the EU. This rule has been laid down in the implementing legislation and so there is no longer a need to require detailed rules to be made. This instrument, however, retains the power to lay down a detailed rule and provides that we may do so.</p>
<p>Commission Regulation (EC) No 889/2008 of September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control.</p>	<p>This Regulation implements the organic production framework for the production and labelling of organic food and feed as it relates to production and labelling. Minor technical amendments have been made to the Regulation to ensure that this Regulation has effect for the UK organic sector after EU Exit</p> <p>For a strictly time-limited period of 21 months we will exempt the need for additional checks or paperwork for organic goods being imported directly from the EU, the EEA states or</p>

	Switzerland except those organic goods which do not originate from but are simply transiting through these territories.
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