

EXPLANATORY MEMORANDUM TO
THE ORGANIC PRODUCTS REGULATIONS 2009

2009 No. 842

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. These Regulations revoke and replace the Organic Products (Imports from Third Countries) Regulations 2003 (SI 2003/2821) and the Organic Products Regulations 2004 (SI 2004/1604). They provide for the administration and enforcement of Council Regulation (EC) No 834/2007 and Commission Regulations (EC) Nos 889/2008 and 1235/2008 which lay down detailed rules for implementing Council Regulation 834/2007.

3. Matters of special interest to the Joint Committee on Statutory Instruments.

3.1. None. There are no increases in fees above the rate of inflation as a result of making these Regulations.

4. Legislative Context

4.1. SI 2003/2821 and SI 2004/1604, which are revoked and replaced by this instrument, provided for the administration and enforcement of Council Regulation (EEC) No 2092/91 and Commission Regulations made under it. Council Regulation 2092/91 has been revoked by Council Regulation 834/2007 and this instrument updates accordingly the powers needed to enforce Council Regulation 834/2007 and Commission Regulations (EC) 889/2008 and 1235/2008 which lay down detailed rules for implementing it.

4.2. This instrument is made under the European Communities Act 1972 section 2 (2) and the Finance Act 1973 section 56 (1) and (2).

5. Territorial Extent and Application

5.1 This instrument applies to the United Kingdom.

6. European Convention on Human Rights

6.1. As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

- **What is being done and why**

7.1 This instrument is needed to provide powers appropriate for the administration and enforcement of Council Regulation (EC) No 834/2007 and Commission Regulations (EC) 889/2008 and 1235/2008 which lay down detailed rules for implementing Council Regulation 834/2007. In essentials the powers for the administration and enforcement of Council Regulation 834/2007 and Commission Regulations 889/2008 and 1235/2008 provided in this instrument mirror those in the two instruments being revoked but certain clarifications are made in respect of fees and in respect of duties delegated to the organic control bodies which licence individual organic operators (farmers, growers, food processors, importers etc). Also the opportunity has been taken to consolidate provisions for dealing with imports from third countries by including them within this instrument.

7.2. Unlike Council Regulation 2092/91, which it has replaced, Council Regulation 834/2007 does not permit a member State to apply to organic livestock production on its own territory controls stricter than those it provides for. The need for a Compendium of UK Organic Standards as a vehicle for applying such stricter controls in the UK no longer exists so this instrument does not carry forward the provision for one made in the Organic Products Regulations 2004. However guidance on interpreting the Council and Commission Regulations, drawn up in consultation with the organic stakeholders has been made available on Defra's website at <http://www.defra.gov.uk/farm/organic/standards/index.htm>.

- **Consolidation**

Not an issue but see paragraph 7.1.

8. Consultation outcome

There has been extensive separate consultation of the stakeholders on the Council and Commission Regulations for which this SI provides for the administration and enforcement and the guidance referred to in paragraph 7.2 has been agreed with them. Because of the limited impact of this SI in terms of its effect on those who have to comply with it and their number, a limited consultation including only those directly affected has been carried out. Respondents to the consultation were content with the Regulations but some useful drafting suggestions were made which have been taken on board. The organic control bodies are content with the streamlining of administrative procedures referred to below in paragraph 11.2 but have asked that they should be able to raise with Defra concerns that may arise about fees charged to them under the new arrangements. This request has been accepted and the control bodies will also be involved in the review of costs and benefits to be carried out next year.

9. Guidance

Guidance on the implementation of the Council and Commission Regulations for which this instrument provides has been placed on the Defra website at <http://www.defra.gov.uk/farm/organic/standards/pdf/guidance-document-dec2008.pdf>

10. Impact

10.1 This instrument will have no adverse impact on business, charities or voluntary bodies.

10.2. This instrument will have no adverse impact on the public sector.

10.3. An Impact Assessment has been prepared and a copy placed in the library of each House of Parliament.

11. Regulating small business

11.1 The legislation applies to small business. The majority of the businesses to subject to the SI are small businesses.

11.2 Although this does not appear on the face of the instrument, steps are being taken to minimise the impact of the requirements on small firms employing up to 20 people by streamlining administrative procedures relating to the approval by Defra of the control bodies which license individual organic operators (farmers, growers, food processors, importers etc), as required by Council Regulation (EC) No 834/2007 and Commission Regulation (EC) 889/2008, in order to eliminate duplication of effort and cost.

11.3 The basis for the action referred to in paragraph 11.2 is the review of the Advisory Committee on Organic Standards (paragraph 6.24) which reported in 2008 <http://defraweb/farm/organic/standards/acos/pdf/acos-report080606.pdf>.

12. Monitoring and review

12.1 A review of costs and benefits will be carried out in April 2010.

13. Contact

13.1. James Winpenny at the Department for Environment, Food and Rural Affairs; Tel: 020 7238 5749 or email: james.winpenny@defra.gsi.gov.uk can answer any queries regarding the instrument.

