

EXPLANATORY MEMORANDUM TO

THE ORGANIC CONTROL (AMENDMENT) REGULATIONS 2021

2021 No. 94

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 amends retained direct EU legislation containing temporary Covid-19-related derogations concerning organics to extend the application of the derogations relating to Commission Regulation (EC) No 889/2008.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Defra regrets that it is necessary on this occasion to breach the 21-day rule. The legislation amended by this instrument became retained EU legislation on 1 January 2021, and unless it is amended it will cease to have effect on 1 February 2021. Defra anticipated that the European Commission might have amended the EU version of Commission Implementing Regulation (EU) No 2020/977 prior to the end of the transition period, but it did not do so. Defra notes that the extension of the derogations in Regulation (EU) 2020/977 operates for the benefit of industry and is supported by relevant stakeholders.

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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Great Britain.
- 4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

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

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, Regulation (EC) No 1235/2008, Regulation (EU) No 2020/446, and Regulation (EU) No 2020/977) were incorporated into domestic law at the end of the transition period. This instrument amends Regulation (EU) 2020/977 which contains derogations from Regulations 889/2008 and 1235/2008. 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 The UK is in the middle of the second wave of Covid-19. Cases through the winter have increased beyond the levels in the first wave. Strict national restrictions have been reinstated to reduce infection for the third time.
- 7.2 These national restrictions continue to significantly limit the ability of control bodies to carry out the business as usual verification of organic products. Organic operators are limiting access to their sites to essential visitors, while control bodies are protecting the health and welfare of their inspectors. National measures have also imposed a ‘stay at home’ requirement which prevents control bodies attending their operators’ sites.
- 7.3 As some checks can be carried out remotely and it is not known when the strict national restrictions will be eased, this instrument makes operability amendments to retained Commission Implementing Regulation (EU) No 2020/977 which provided for the Covid-19 easements which were in place at the end of the transition period and extends them to the end of 2021 or while national restrictions are in place, as relevant. This is important for the organic sector as it will mean that consumers can continue to trust that the organic products they buy have been certified as organic.
- 7.4 As noted above, retained Regulation (EU) 2020/977 provided for derogations from aspects of the process for verifying the integrity of organic products. The derogations related to physical inspections and sampling, the use of Trade Control and Expert System (TRACES NT) to import organics goods and the notification of irregularities via the Organic Farming Information System (OFIS). The Regulation was extended by Commission Implementing Regulation (EU) 2020/1667 to end on 1 February 2021, effective while national measures were in place, with some specific derogations relating to annual calculations ending on 31 December 2020.
- 7.5 This instrument amends retained Regulation (EU) No 2020/977 to remove references to ‘Member States’ and to extend the end date of the current easements relating to physical inspections and sampling for verifying the integrity of organics products; the EU is also expected to further extend these easements. The derogations for a reduction in unannounced inspections, additional random control visits and samples taken by control bodies will be extended to 31 December 2021.
- 7.6 This instrument also removes the end date for the derogation relating to annual supervision audits. This is not be an open-ended derogation and once the strict national restrictions on movement are lifted. Defra will make organic control bodies aware when this derogation ends. Lastly, it removes the derogation relating to the use of TRACES NT for third countries to import organic products into the EU and the notification of irregularities via OFIS. Having left the EU, the UK no longer uses TRACES NT or OFIS; Northern Ireland retains access to both systems as outlined by the Protocol.

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

8.1 This instrument does not trigger the statement requirements under the European Union (Withdrawal) Act.

8.2 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union insofar as it includes minor operability amendments to the legislation being amended.

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 formal public consultation has been undertaken for the amendments being made under this instrument, but Defra has consulted with the United Kingdom Organic Certifiers Group (UKOCG), as industry representatives, to familiarise them with the proposed amendments that will be made by this instrument. Industry is supportive of the extension of the derogations.

10.2 Defra has also engaged the Devolved Administrations 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. The Devolved Administrations in Scotland and Wales have consented to the Secretary of State making this instrument.

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 The Regulations do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Parliamentary Under Secretary of State for Agriculture, Fisheries and Food, Rt Hon Victoria Prentis MP, has made the following statement:

“It is not appropriate to include a statutory review clause in this instrument as it is expected to be temporary in nature and is not expected to have a significant annualised net impact on business.”.

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