

EXPLANATORY MEMORANDUM TO

THE COMMON ORGANISATION OF THE MARKETS IN AGRICULTURAL PRODUCTS (MARKETING STANDARDS AND ORGANIC PRODUCTS) (TRANSITIONAL PROVISIONS) (AMENDMENT) REGULATIONS 2022

2022 No. 609

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 This instrument will amend retained European Union (“EU”) and domestic legislation in order to extend the grace periods concerning import requirements that apply to certain agricultural products. It will extend the grace periods applying to import requirements for (i) hops and hop products exported by the EU and certain third countries to Great Britain (“GB”), (ii) poultrymeat with optional indications exported from the EU to GB and (iii) organic products exported from the EU, European Economic Area (“EEA”) states and Switzerland to GB. These amendments are being made in light of rising costs to British people and businesses caused by Russia’s war in Ukraine and increasing energy prices, as announced in a Written Ministerial Statement by the Minister for Brexit Opportunities and Government Efficiency on 28 April 2022. As a result, import controls for hops, organic products and poultrymeat with optional indications imported from the EU will not, as previously planned, be introduced on 1 July 2022. This will avoid placing additional costs on British businesses and consumers, and ensure frictionless trade while the Government accelerates its transformative programme to digitise Britain’s borders, harnessing new technologies and data.

- 2.2 The legislation amended by this instrument is:

- Retained Council Regulation (EC) No 834/2007 on organic production and labelling of organic products (EUR 2007/834);
- Retained Commission Regulation (EC) No 543/2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat (EUR 2008/543);
- Retained Commission Regulation (EC) No 1235/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries (EUR 2008/1235);
- Retained Commission Regulation (EC) No 1295/2008 on the importation of hops from third countries (EUR 2008/1295);
- Retained Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products (EUR 2013/1308);

- The Hops Certification Regulations 1979, in respect of Great Britain (S.I. 1979/1095).

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 and application of this instrument is Great Britain.

5. European Convention on Human Rights

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

“In my view the provisions of the Common Organisation of the Markets in Agricultural Products (Marketing Standards and Organic Products) (Transitional Provisions) (Amendment) Regulations 2022 are compatible with the Convention rights.”

6. Legislative Context

6.1 This instrument amends the retained EU law and domestic legislation referenced in paragraph 2.2 in order to extend the grace periods concerning import requirements for organic products, hops and poultrymeat with optional indications.

6.2 Under section 3 of the European Union (Withdrawal) Act 2018 (“EUWA”), the EU legislation listed in paragraph 2.2 was retained at the end of the Transition Period (at 11pm on 31 December 2020). The Hops Certification Regulations 1979 were retained in UK law under section 2 of the EUWA.

6.3 The listed legislation was amended at the end of the Transition Period to insert transitional provisions relating to the commencement of the use of GB marketing standards documentation for imports. These transitional arrangements were designed to provide industry with sufficient time to prepare for import controls and new GB marketing standards documentary checks following the UK’s withdrawal from the EU. The transitional arrangements concern the conditions under which imported products are considered to have an equivalent level of conformity to GB products.

6.4 Publication of a Target Operating Model is expected in Autumn 2022, which will set out the new regime of border import controls and will target the end of 2023 as the revised introduction date for import controls. While the Government has made it clear that new requirements for import controls will not now be introduced in 2022, the precise timeline for the introduction of those controls after 2022 is still being developed. While this instrument extends transitional arrangements for marketing standards and organic import controls to 1 January 2024, this may in future change to take account of the timelines set out in the expected Target Operating Model for the phased introduction of sanitary and phytosanitary (“SPS”) controls during 2023. Any future changes to transitional arrangements will be communicated to businesses with sufficient notice.

7. Policy background

What is being done and why?

- 7.1 On 28 April 2022 the Government announced, through a Written Ministerial Statement by the Minister for Brexit Opportunities and Government Efficiency, a further deferment of border controls on EU imports until the end of 2023 due to rising costs to British people and businesses as a result of Russia’s war in Ukraine and increasing energy prices. The purpose of the deferral is to avoid placing additional costs on British businesses and consumers while the Government accelerates its transformative programme to digitise Britain’s borders, harnessing new technologies and data. This instrument amends the transitional arrangements in legislation to end on 31 December 2023 in line with the announcement.

Explanations

How did the law operate before the changes made by this instrument?

- 7.2 Regulation (EU) No 1308/2013 (“the CMO”) is the framework for the functioning and administration of the Common Organisation of Agricultural Markets and is part of Pillar 1 of the EU’s Common Agriculture Policy (“CAP”). The CMO was retained in UK law under section 3 of the EUWA. The CMO was set up as a means of meeting the objectives of the CAP (Article 40 of the Treaty on the Functioning of the European Union), to stabilise markets, ensure a fair standard of living for agricultural producers and increase agricultural productivity. It has broadened out to provide a toolkit that enables the EU to:
- (i) manage market volatility
 - (ii) incentivise collaboration between and competitiveness of agricultural producers; and
 - (iii) facilitate trade.
- 7.3 Marketing standards establish detailed rules with regards to the quality of agricultural products and provide product information to consumers. They are intended to make sure that products offered to consumers are accurately and consistently labelled, are of acceptable quality and that unsatisfactory produce is kept off the market. The CMO (as retained in UK law following EU exit) sets out general marketing standards for agricultural products, which are supplemented by regulations setting out detailed standards relating to marketing requirements, certification requirements and import requirements for each agricultural product.
- 7.4 Organic food is regulated by retained Council Regulation (EC) No 834/2007 and retained Commission Regulations (EC) No 889/2008 (not amended by this instrument) and (EC) No 1235/2008: these provide for the production, processing, labelling, inspection and import requirements for organic products.
- 7.5 Transitional provisions in the legislation listed in paragraph 2.2 set out grace periods to allow businesses additional time to prepare for the introduction of the relevant certification and inspection requirements, supporting trade, and minimising border disruptions following the UK’s withdrawal from the EU. These grace periods aligned with the wider plans outlined in the Government’s Border Operating Model.
- 7.6 The grace periods were subsequently amended by The Common Organisation of the Markets in Agricultural Products (Transitional Arrangements) (Amendment)

Regulations 2021 (S.I. 2021/652) to align the grace periods with the revised timetable for the introduction of SPS border controls, announced by Ministerial Statement on 11 March 2021. The grace periods were further amended by The Common Organisation of the Markets (Marketing Standards and Organics Products) (Transitional Provisions) (Amendment) Regulations 2021 (S.I. 2021/1396).

- 7.7 The grace periods set by these instruments in respect of imports of hops from the EU and certain third countries, organic products from the EU, EEA states and Switzerland, and of poultrymeat with optional indications from the EU, end on 30 June 2022.

Why is it being changed?

- 7.8 In a Written Ministerial Statement by the Minister for Brexit Opportunities and Government Efficiency on 28 April 2022, a further deferral of controls on EU imports was announced. The purpose of the deferral is to avoid placing additional costs on British businesses and consumers and to ensure frictionless trade while the Government accelerates its transformative programme to digitise Britain's borders, harnessing new technologies and data.
- 7.9 The introduction of marketing standards requirements for EU imports following the end of the Transition Period was in line with the Government's phased approach set out in the Border Operating Model and the implementation of SPS controls. Following the announcement on 28 April 2022, the existing transitional provisions for hops, poultrymeat with optional indications and organics are being changed.

What will it do now?

- 7.10 This instrument will make technical amendments to the transitional arrangements in the relevant retained EU and domestic legislation regarding hops and hop products, poultrymeat with optional indications, and organic products. The transitional provisions brought about by The Common Organisation of the Markets (Marketing Standards and Organics Products) (Transitional Provisions) (Amendment) Regulations 2021 (S.I. 2021/1396) otherwise end on 30 June 2022. This instrument will extend the grace periods to end on 31 December 2023.

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

- 8.1 This instrument is not being made under the EUWA but relates to the withdrawal of the United Kingdom from the European Union. This is because it amends the grace periods in the legislation listed at paragraph 2.2, in respect of imports from the EU of organic products, poultrymeat with optional indications and hops, to align with the introduction of wider border controls on imported EU goods.

9. Consolidation

- 9.1 Defra does not intend to consolidate the relevant legislation at this time.

10. Consultation outcome

- 10.1 No consultation was undertaken for the amendments being made under this instrument given that they are technical in nature.

- 10.2 Defra has communicated the changes to stakeholders to allow for familiarisation with the changes to import requirements made by this instrument.
- 10.3 Defra has engaged with the Devolved Administrations in order to inform and familiarise them with the changes introduced by this instrument ahead of laying.

11. Guidance

- 11.1 Defra is not producing specific guidance on this instrument, as it only makes technical amendments to the retained EU and domestic legislation. However, the Government has updated the Border Operating Model, and the relevant changes to import requirements made by this instrument have been reflected in the sector specific guidance available on GOV.UK.

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 A full Impact Assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No disproportionate impacts are foreseen to affect small or micro businesses.

14. Monitoring & review

- 14.1 As this instrument amends transitional provisions which will now end on 31 December 2023, no statutory review clause is required. Defra and its agencies will monitor and review the impact of the instrument as part of its standard policymaking procedures and will ensure that the provisions are adhered to.

15. Contact

- 15.1 Chris Sanderson at the Department for Environment, Food and Rural Affairs (email: Christopher.Sanderson@defra.gov.uk) can be contacted with any queries regarding this instrument.
- 15.2 Balwinder Dhoot, Deputy Director for Food, Farming Sectors and Trade, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Victoria Prentis MP at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.