

EXPLANATORY MEMORANDUM

Title: The Organic Products Regulations 2004 (2004 No.1604)

Laying Authority and Purpose

This explanatory memorandum is laid before Parliament by Command of Her Majesty.

Description

The Regulations provide for the continued administration and enforcement of Council Regulation (EEC) No. 2092/91, which sets out rules for the production of agricultural products labelled as organic and establishes a control system for the registration and certification of persons producing or processing organic products or importing them from outside the EU. The Regulations contain new provisions for charging for issuing or renewing an authorisation for an ingredient not obtained by organic production to be included in an organic product, and for issuing, varying or renewing an authorisation to market organic products imported from a third country. The Regulations also contain a new provision for charging for the registration of organic seeds in the computerised database established under Commission Regulation (EC) No. 1452/2003.

Legislative background:

The Regulations are made under section 2(2) of the European Communities Act 1972 and, insofar as they relate to the imposition of charges by the Secretary of State, under section 56(1) and (2) of the Finance Act 1973. The Regulations, in so far as they relate to such charges, are made with the consent of the Treasury.

Extent:

The Regulations apply to all of the United Kingdom.

Policy background:

The Regulations reflect Defra's policy on charging for services in that, whilst in the past services relating to import authorisations and ingredient authorisations have been provided free of charge, the cost of providing them is now to be borne by the relevant manufacturers and importers.

In addition, the Regulations appoint the Soil Association Limited to be the manager of the seeds database and require the Association to charge a fee in respect of the expenses reasonably incurred by it in registering and maintaining information on the database

The Regulations reflect the transfer of responsibility for the approval of organic certification bodies and the control of UK standards to Defra and take into account the abolition of the UK Register of Organic Food Standards and its replacement by the Advisory Committee on Organic Standards.

The subject matter of the Regulations is not of particular political importance but public interest in organic production is increasing.

Impact:

A Regulatory Impact assessment relating to ingredient derogations and import authorisations has been prepared and a copy is attached. A Regulatory Impact Assessment has not been prepared in respect of registration in the seeds database because such registration is optional for seed suppliers and does not preclude the advertising or sale of organic seeds by any other means. Nor has such an assessment been prepared in respect of any of the other matters referred to in the Regulations as they have no impact on the cost of business or, as in the case of charges for approval of certifiers, continue existing practice.

Contact:

For general issues and those relating to the control of organic certifiers: Peter Crofts, Organic Strategy Branch, Defra, Ergon House, Horseferry Road, London SW1 2AL
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For queries in connection with charges for import authorisations, ingredient authorisations and the seeds database: Georgina Karlsson, Organic Farming branch, Defra 020 7238 5758; email: organic.imports@defra.gsi.gov.uk

Department for Environment, Food and Rural Affairs
June 2004

ORGANIC PRODUCTION: INTRODUCTION OF CHARGES FOR IMPORT AUTHORISATIONS AND INGREDIENT AUTHORISATIONS

REGULATORY IMPACT ASSESSMENT

1. Title of Proposal

Charging for the issuing of import authorisations for organic produce from third countries and for authorisations to use conventionally-produced ingredients in organic products.

2. Purpose and intended effect of measure

(i) The objective

To enable Defra to recover the costs of issuing import authorisations for organic produce from third countries, according to Article 11(6) of Council Regulation (EEC) No. 2092/91 and for the consideration of applications to use conventionally-produced ingredients in organic products, according to Article 5 of Council Regulation (EEC) No. 2092/91.

(ii) The background

Organic Imports

Council Regulation (EEC) No. 2092/91, which controls the production and sale of organic produce in the Community, requires that organic produce from third countries (any country outside the EU) must have been produced to standards equivalent to Community standards, for import into the EU. The European Commission has assessed and recognised the equivalence of the following eight third countries: Argentina, Australia, Costa Rica, Czech Republic, Hungary, Israel, New Zealand and Switzerland, for certain products. All other imports of organic produce from third countries are subject to a system that requires them to be individually authorised by one of the Member States, usually the Member State into which the produce is to be imported.

Regulation 2092/91 does not prescribe a period of validity for these authorisations. Most Member States issue them for a period of one year. Until the beginning of May this year UKROFS issued them with a uniform expiry date (31st December 2005) because by this date a decision has to be taken on whether the Commission should assume complete responsibility for determining equivalence. However, it is quite likely that the present system will continue beyond this date and therefore in May this year procedures were brought into line with other Member States and authorisations are now issued for one year, but can be varied within this time or renewed after a year has passed. This enables the imports team to ensure that organic certification is still current and that the record of import authorisations is up-to-date.

Conventional ingredients

Article 5(3) of Regulation (EEC) No. 2092/91 states that in order for a product to be labelled as organic at least 95% of the agricultural

ingredients of it must have been produced organically. Any conventional ingredient within the remaining 5% of the product must either appear on the Community list of permitted conventional ingredients (Annex VI of Reg 2092/91) or have been authorised by a Member State. These authorisations are valid for three months, and can be extended for a further seven months.

Issuing authorisations for imports and ingredients

Currently, the Organic Farming Branch in Defra issues these authorisations, as it is the competent authority in the UK for implementing the Organic Regulations. The assessment and issuing of applications and authorisations is currently provided free of charge but, in line with general Government policy to recover the reasonable full cost of providing services and products supplied by Government Departments, Agencies and certain other public bodies, and as recommended by the Report on Stage I of the Quinquennial Review of UKROFS, we are proposing to recover the costs of issuing these documents.

3. Options

Option 1: Do nothing - maintain the current system of annual renewals, without recovering costs;

Option 2: Defra to continue with the current system of annual renewals for import authorisations and to recover the costs of processing and issuing import applications and ingredient derogations as outlined in the consultation exercise;

Option 3: Defra to continue with the current system of annual renewals for import authorisations and to recover the costs of processing and issuing import applications and ingredient derogations, according to the revised costs.

4. Benefits

Option 1: No additional work for Imports team or importers. No financial impact on importers of organic produce because the assessment of the applications and the authorisations would be funded by Defra.

Option 2: In line with general Government policy on charging for services, and as recommended by the Report on Stage I of the Quinquennial Review of UKROFS, Defra will recover the costs of authorising import applications and ingredient derogations as outlined in the consultation exercise.

Option 3: In line with general Government policy on charging for services, and as recommended by the Report on Stage I of the Quinquennial Review of UKROFS, Defra will recover the costs of authorising import applications and ingredient derogations. A further review of the time taken

to process applications has been carried out and further efficiency savings have been taken into account. This will have less impact than Option 2 on importers' businesses.

5. Costs

(i) Compliance costs

Option 1: The estimated cost to the Department of maintaining the system of authorising import applications for one year and renewing them annually, and issuing ingredient derogations is £38,005 per annum.

Option 2: The initial estimates of the charges needed to be levied by Defra in order to recover the costs of issuing the authorisations were:

Type of Application	Cost per application	Average time taken to process (hrs)
Import authorisations	£84	4.0
Variations of import authorisations	£49	2.3
Renewal of import authorisations	£20	1.0
Authorisations to use conventional ingredients	£38	1.7

These estimates were based on the system employed during the latter half of 2002 during which period the procedures for assessing and issuing authorisations were overhauled to increase efficiency and minimise the resource commitment needed for effectively performing these functions. These are the figures used in the consultation exercise.

Option 3: Following the consultation exercise a thorough review of the current processing times of applications was carried out. Since the figures in Option 2 were calculated, efficiency has increased further and the times taken to assess applications have decreased further, which is possibly due to the receipt of better applications. Therefore, the charges proposed in the consultation have been revised to those below:

Type of Application	Cost per application	Average time taken to process (hrs)
Import authorisations	£53	2.5
Difficult variations of import authorisations (require additional information)	£33	1.5
Variations (all necessary information complete)	£10	0.5
Renewal of import authorisations	£20	1.0
Authorisations to use conventional ingredients	£38	1.7

(ii) Other costs

Option 1: The total cost to Defra for authorising import applications, variations to import applications, annual renewals and ingredient derogations is estimated at £38,005 per annum.

Option 2: Defra will need to implement an accounting system for the charges. No other costs.

Option 3: Defra will need to implement an accounting system for the charges. No other costs.

(iii) Costs for a typical business

Option 1: No additional costs to those already incurred by importers for completing the necessary application forms.

Option 2: Importers applying for a new import authorisation would incur a one-off fee of £84, but this would enable them to bring in multiple consignments up to the tonnage stated on the application form, from the holdings specified. After this payment, importers would only incur the cost of renewal (£20) per year. A variation in the import authorisation (e.g. adding a new product) would cost £49.

The most import authorisations held by any one importer is 44. This importer also holds the most authorisations issued after the introduction of annual authorisations in May 2003 at 7. Those authorisations issued before May 2003 will not incur a charge of £84 and are currently authorised until 31 December 2005. Therefore, currently the maximum that any importer will be paying to renew import applications is £140 (at £20 each), assuming that all import authorisations will still be required. However, after December 2005 the cost could rise to £880 per year for this importer. But the majority of importers will have factored this into their running costs by the time they have to pay for renewals in December 2005. The majority of importers hold only a few import authorisations and therefore the cost is unlikely to affect their business greatly.

Option 3: The reviewed charges would mean that importers would only incur a one-off fee of £53 in the beginning, enabling them to bring in multiple consignments up to the tonnage stated on the application form, from the holdings specified. After this payment, importers would only incur the cost of renewal (£20) per year.

There are approximately 250 importers recorded as holding at least one organic import authorisation. All those authorisations issued before 6 May 2003 have an expiry date of 31 December 2005, therefore, the introduction

of charges means that these importers only incur the annual renewal fee of £20 after that date.

Under *Option 3* the importer possessing 44 authorisations would incur the same charges for renewals as *Option 2*, because the reviewed times for processing a variation were not different to those previously estimated.

However, the reviewed charges for processing a variation of an import authorisation will mean that those importers that supply all of the required details with their variation application and which take a short time to process will be charged a lower fee of £10. Those variation applications that require substantially more work will attract a higher processing cost of £33.

6. Consultation with small business: the Small Firms' Impact Test

All organic operators who possess an organic import authorisation or ingredient derogation were consulted in a letter outlining Defra's proposal to charge for issuing import authorisations and ingredient derogations sent on 7 July 2003. These would have been a representation of small, medium and large companies. As well as these companies, we also consulted the following bodies and organisations:

UK organic inspection bodies	Others consulted
Bio-Dynamic Agricultural Association	UKROFS Board
CMi Certification	Action Plan Stakeholder Group
International Certification Service (GB) Ltd	Consumer's Association
Irish Organic Farmers and Growers Association	Co-operative Women's Guild

Organic Certification Ltd	National Consumer Council
Organic Farmers and Growers Ltd	Consumers in Europe Group
Organic Food Federation	Co-operative Women's Guild
Organic Trust Ltd	National Consumer Council
Quality Welsh Food Certification Ltd	Sustain
Scottish Organic Producers Association	National Federation of Consumer Groups
SGS United Kingdom Ltd	National Federation of Women's Institutes
Soil Association Certification Ltd	National Housewives' Association
	Townswomen's Guilds
	Women's National Commission
	The Food Commission
	European Research into Consumer Affairs

During the 3-month consultation period 17 responses were received, 15 from importers of organic produce. Two importers were in support of the proposal and 12 expressed opposition. All made reference to charging for the import of organic produce and none to charges for ingredient derogations. The additional two responses were from a trade organisation and a consumer federation.

Almost all of those importers in opposition hold several current import authorisations with expiry dates of 31 December 2005, therefore it seems unlikely that the issue of having to pay £20 per year renewal fees in 2006

is a major point of contention. It would be reasonable to assume that most importers intend to apply for more import authorisations or request variations in the near future and that this is more likely to be their major concern.

The importers may support the proposal because they have many authorisations in place already and do not intend to apply for more and therefore the renewal fee of £20 would not have much impact or they may import large quantities from a single import authorisation so that the cost of one or two renewal fees of £20 would be negligible.

Concern was raised from an importer that they often requested variations to their import authorisation as and when more organic products became available from the producer and that because these products are sometimes of low value or small quantities a charge of £49 would discourage importers from adding them to an import authorisation. We have investigated whether we could implement different levels of charging for variations, to try to address this issue. Option 3 now proposes a two-tier system for variations to import authorisations. If a variation is requested and has all the required information included then a fee of £10 will be charged. However, for difficult variations where more information is required by the imports team there would be a charge of £33.

In response to concerns expressed from the response we received we have revisited the charges that were based on the running of the system at the beginning of the year. There have been further efficiency savings and an improvement in the quality of applications of import authorisations and variations we have received. We have therefore reviewed the charges proposed in the consultation letter and produced revised charges to reflect the current situation (Option 3).

7. Competition Assessment

THE COMPETITION FILTER TEST

Question	Answer yes or no
Q1: Would the costs of the regulation affect some firms more than others?	No
Q2: Is the implementation of charges likely to affect the market structure, changing the number or size of firms?	No

Q3: Would the implementation of charges lead to higher set-up costs for new or potential firms that existing firms do not have to meet?	Yes – a new importer would be required to apply for new authorisations. Existing importers with authorisations in place will not incur this initial cost unless they wish to apply for a new authorisation.
Q4: Would the implementation of charges lead to higher ongoing costs for new or potential firms that existing firms do not have to meet?	No
Q5: Would the implementation of charges restrict the ability of firms to choose the price, quality, range or location of their products?	No

8. Enforcement and Sanctions

It is a requirement of Regulation (EC) 2092/91 that importers have to apply for import authorisations for organic produce and therefore the enforcement and sanctions already in place would apply to Option 1. They would also apply to Options 2 and 3 but in addition, Defra would be able to revoke the import authorisations and variations, or renewals of authorisations, and ingredient derogations if payment was not received within the time period specified.

9. Monitoring and Review

There will be continual monitoring and assessment but a formal review of the system will be carried out after a year of operation.

10. Consultation

(i) Within Government

The Devolved Administrations.

(ii) Public consultation

Defra has consulted all importers of organic produce, those manufacturers holding ingredient derogations and those bodies listed in the table at section 6 of this document.

11. Summary and Recommendation

- Defra proceed with their intention to charge for issuing import authorisations for organic produce and derogations to use specified levels of non-organic ingredients within an organic product and that the figures for charging should be those displayed for Option 3.

Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed Ben Bradshaw

Date 14th June 2004

BEN BRADSHAW

Parliamentary Under-Secretary of State

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