

EXPLANATORY MEMORANDUM TO
THE ORGANIC PRODUCTS (AMENDMENT) REGULATIONS 2015

2015 No. 1669

1. 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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.
2. **Purpose of the instrument**
 - 2.1 This instrument amends The Organic Products Regulations 2009 (S.I. 2009/842) (“2009 Regulations”) to remove some powers conferred upon organic Control Bodies to permit organic operators to make use of certain exceptions from the organic production rules. These changes bring the powers fully into line with Commission Regulation (EC) No 889/2008, 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.
 - 2.2 This instrument removes reference to fees chargeable by Defra for the issue of import authorisations.
 - 2.3 This instrument updates the fee levied by Defra on applications to become an organic Control Body and has been updated in line with full cost recovery calculations.
 - 2.4 This instrument corrects a cross-reference to the EU legislation.
 - 2.5 This instrument inserts a review provision providing for a review of the 2009 Regulations as regards England.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None. There are no increases in fees above the calculation of full cost-recovery as a result of this amendment.
4. **Legislative Context**
 - 4.1 The 2009 Regulations as amended by The Organic Products (Amendment) Regulations 2010 (S.I. 2010/1902) provide for the administration and enforcement of Council Regulation (EC) 834/2007 on organic production and labelling of organic

products, and Commission Regulations (EC) 889/2008 and 1235/2008 which lay down detailed rules for implementing Council Regulation (EC) 834/2007 (collectively the “EU Organic Regulations”).

5. Territorial Extent and Application

5.1 This instrument applies to all of 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

7.1 The 2009 Regulations, amongst other things, delegate to organic Control Bodies the power to administer certain exceptions in respect of organic production rules that are set out in the EU Organic Regulations. Organic Control Bodies have delegated authority to certify growers, processors and importers as organic.

7.2 In May 2013, Defra was audited by the EU’s Food and Veterinary Office (“the FVO”) to evaluate the UK control system for organic production and labelling of organic produce. The FVO recommended changes to the number of powers delegated to organic Control Bodies which would bring the UK fully into line with the EU Organic Regulations identified in paragraph 4.1 above.

7.3 This instrument also removes reference to fees chargeable by Defra for the issue of import authorisations as this was a transitional measure in the Regulation which has now come to an end.

7.4 Defra has reviewed all fees allowed under the 2009 Regulations in line with full cost-recovery calculations. As a result, the fee charged by Defra to consider applications to become an organic Control Body has been increased to allow for full recovery of the administration costs involved.

7.5 Of the permitted exceptions to the organic production rules allowed to be authorised by a Control Body, only the power to permit the use of non-organic seed and seed potatoes for the purposes of Article 45 of Commission Regulation (EC) 889/2008 remains delegated to organic Control Bodies. The erroneous reference to Article 45(1)(a) has been corrected to Article 45(1)(b) and the incorrect reference to permitting use of non-organic seed and vegetative propagating material has been corrected to permitting the use of non-organic seed and seed potatoes.

Consolidation

7.6 There are ongoing negotiations on a proposal by the European Commission for a new Regulation on organic production and labelling of organic products, repealing Council Regulation (EC) No 834/2007. It is expected that the proposed Regulation will apply from 1 July 2017. It will be necessary to review the domestic implementing Regulations once negotiations on the European Commission's proposal have completed. Consolidation will be further considered at that stage.

8. Consultation outcome

8.1 Given the minor nature of the amendments made and the purpose being to bring the UK into line with EU legislation there has been no formal consultation on this instrument. There has been an informal consultation with organic Control Bodies in order to agree on a transition of responsibilities from the organic Control Bodies to the Secretary of State as the Competent Authority.

9. Guidance

9.1 This instrument does not affect the way that organic operators function on an operational level. The Department has made UK organic Control Bodies fully aware of the changes and they have been working with the Department to ensure a smooth transition of duties.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible. Defra has established an agreed transitional approach with organic Control Bodies to deliver the most effective transfer of functions between organic Control Bodies and Defra. The changes brought about by this instrument will not cause any disruption to the way that businesses operate. There is no enforcement measure directly connected with these changes.

10.2 The impact on the public sector is marginal. The Secretary of State, as the Competent Authority, will be required to make an assessment of whether an exception to the organic production rules can be applied in any specific case, in place of the organic Control Bodies.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business as it applies to all business in compliance with the EU Organic Regulations. Defra has been liaising closely with UK organic Control Bodies to enable a smooth transfer of authorisations of certain exceptions from the organic production rules from organic Control Bodies to the Secretary of State to ensure that the impact on small businesses is negligible.

12. Monitoring & review

12.1 We have taken the opportunity in this instrument to include a review provision in the 2009 Regulations providing for a review of the 2009 Regulations Regulations by 1st October 2020.

12.2 The EU Organic Regulations are currently being reviewed at an EU level. Any resulting change to the EU Organic Regulations would result in a review of the implementing domestic regulations. As part of such a review, the Department would review the domestic legislation and it may be amended to ensure it fully implements the EU Organic Regulations and we will take the opportunity to also review how EU law obligations are implemented in other Member States as far as reasonable

12. Contact

Andy Read at the Department for Environment Food and Rural Affairs
Tel: 0117 372 3533 or email: andy.read@defra.gsi.gov.uk can answer any queries regarding the instrument.