

## EXPLANATORY MEMORANDUM TO

### THE ORGANIC PRODUCTS (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 109

#### 1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by Department 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 legislation relating to organic products, addressing failures of domestic legislation and other deficiencies arising from the withdrawal of the United Kingdom (“UK”) from the European Union (“EU”). The instrument does not make substantive changes to policy.
- 2.2 Separate instruments relating to organic products will be introduced to address failures of retained EU law to operate effectively arising from the withdrawal of the UK from the EU.

#### *Explanations*

##### What did any relevant EU law do before exit day?

- 2.3 Organic food has been regulated in the UK and in other EU Member States by Council Regulation (EC) No 834/2007 and Commission Regulations (EC) Nos 889/2008 and 1235/2008. The purpose of the Regulations is to ensure consumer protection and they set out the standards that must be met in respect of organic production, processing, labelling and imports, as well as the inspection systems that must be place to ensure the standards are met in all instances where products are being marketed as organic. The Regulations apply to organic food, feed and vegetative propagating material/seeds for cultivation.
- 2.4 In the UK farmers, growers, food processors and importers engaged in organic production are certified by an organic Control Body. Eight organic Control Bodies are currently approved by Defra to operate in the UK.
- 2.5 The enforcement authorities (local trading standards authorities) enforce the organic regulations in the market place. Enforcement at UK points of entry is undertaken by Port Health Authority officers and specialist officers at airports.

##### Why is it being changed?

- 2.6 The Organic Products Regulations 2009 are being amended to ensure that they operate effectively after EU exit. After exit, without amendment these regulations would not allow for enforcement and therefore the standards would not operate properly alongside the retained EU legislation.

What will it now do?

- 2.7 This instrument makes minor and technical amendments to domestic legislation to ensure that it continues to operate effectively once the UK leaves the EU.
- 2.8 Without this instrument the existing domestic regulations would remain in place but they would not operate effectively alongside the retained EU legislation.

### **3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 The Organic Products (Amendment) (EU exit) Regulations 2019 were presented to the Sifting Committees for consideration on 20th November 2018. On 4th December 2018 the Sifting Committees agreed with the Government that this instrument does not have to have a debate in parliament, though one may still occur. The instrument will therefore remain subject to the negative resolution procedure.

*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 the United Kingdom
- 4.2 The territorial application of this instrument is the United Kingdom

### **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 Through the European Union (Withdrawal) Act 2018 (“EUWA”), existing EU Regulations (Regulation (EC) No 834/2007, Regulation (EC) No 889/2008 and Regulation (EC) No 1235/2008) will be converted into UK law and continue to apply after we have left the EU.
- 6.2 The retained direct EU legislation will need to be amended to ensure that the law remains operative post EU exit. This instrument makes the relevant amendments to EU derived domestic legislation to ensure that existing domestic law continues to operate effectively post exit.
- 6.3 The Organic Products Regulations 2009 were made on a UK wide basis, but Organics is a devolved matter. This instrument has been developed in collaboration with Devolved Administration officials and the corrections being made by this instrument to the Organic Products Regulations 2009 provide for a common UK approach.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The organic sector is worth £2.2bn per annum to the UK economy. A fully operational organic regulation is essential to ensure the sector can continue to operate after exit day.
- 7.2 The legislation is amended to the extent necessary to enable it to continue to operate effectively in the UK when we have left the EU. The certification and traceability of organic food and feed products will continue to be required.
- 7.3 This instrument applies to agriculture which is a transferred matter for Northern Ireland under section 4 of the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent a Northern Ireland Executive. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

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

- 8.1 This instrument is being made using the power in section 8 of the EUWA in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of this Explanatory Memorandum.

## **9. Consolidation**

- 9.1 This instrument is not consolidating any provisions.

## **10. Consultation outcome**

- 10.1 This instrument has been developed in collaboration with Devolved Administration officials.
- 10.2 No separate consultation exercise was conducted as this instrument makes technical amendments whose purpose is to maintain continuity of approach in the context of the UK leaving the EU; it does not change the substantive policy.

## **11. Guidance**

- 11.1 A Technical Notice has been published on the gov.uk website.

## **12. Impact**

- 12.1 There is expected to be no, or no significant, impact on business, charities or voluntary bodies.

- 12.2 Agricultural trade with the EU in organic products would depend on the arrangement decided with the EU, which is outside of the scope of this instrument. Whilst the amendments to the Regulations are intended to simply carry over EU legislation and to make it operable whilst removing inoperable elements, there could be some impact in practice if the EU did not recognise UK products and associated bodies to be of a sufficient standard however this is not a direct result of this instrument.
- 12.3 There is expected to be no, or no significant, impact on the public sector.
- 12.4 An Impact Assessment has not been prepared for this instrument as there is expected to be no significant impact on business as a direct result of this SI as it relates to the maintenance of existing regulation.

### **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

### **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation is that Defra and its agencies, as well as the Devolved Administrations in relation to devolved matters, will monitor and review the impact of the instrument as part of its standard policy-making procedures, and will ensure that the provisions are adhered to.
- 14.2 As this instrument is made under the EUWA, no review clause is required.

### **15. Contact**

- 15.1 Andy Read at the Department for Environment, Food and Rural Affairs Telephone: 07900 164722 or email: [andy.read@defra.gsi.gov.uk](mailto:andy.read@defra.gsi.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Maggie Charnley at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

# Annex

## Statements under the European Union (Withdrawal) Act 2018

### Part 1

#### Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.  State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

## Part 2

### Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

#### 1. Sifting statement(s)

- 1.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Organic Products (Amendment) (EU exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because: the contents of the instrument are not of such significance that Parliament would expect to debate it. The amendments to domestic legislation are the minimum required to make the legislation operable. The technical changes made by this instrument seek to maintain current standards. This instrument does not make substantive changes to policy.

#### 2. Appropriateness statement

- 2.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Organic Products (Amendment) (EU exit) Regulations 2019 do no more than is appropriate”.

- 2.2 This is the case because: the amendments to domestic legislation are the minimum required to make the legislation operable and are not significant in that they maintain current regulatory standards.

#### 3. Good reasons

- 3.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.2 These are: the amendments to domestic legislation are the minimum required to make the legislation operable.

#### 4. Equalities

- 4.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement(s):

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.

4.2 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, George Eustice MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

## **5. Explanations**

5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.