

EXPLANATORY MEMORANDUM TO
THE COMMON ORGANISATION OF THE MARKETS IN AGRICULTURAL
PRODUCTS (TRANSITIONAL ARRANGEMENTS) (AMENDMENT)
REGULATIONS 2021

2021 No. 652

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid 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 will amend retained European Union (“EU”) and domestic legislation in accordance with the European Union (Withdrawal) Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020). Technical amendments will be made to the ‘grace periods’ or transitional provisions concerning import requirements that apply to certain marketing standards sectors (i.e. hops and hop products, wine, fruit and vegetables) exported by the EU to Great Britain (“GB”), as well as to those that apply to hops and fruit and vegetables exported by third countries into GB. In addition, technical amendments will also be made to the grace periods applying to import requirements for organic products exported by the EU, European Economic Area states and Switzerland to GB.
- 2.2 The transitional provisions were set out before the end of the transition period to allow businesses additional time to prepare for the introduction of the relevant certification and inspection requirements and to minimise disruption to trade with the EU. The current instrument will amend the existing dates when marketing standards and organics import requirements are being introduced, in order to align these with the revised timetable for sanitary and phytosanitary (“SPS”) border controls.

Explanations

What did any relevant EU law do before exit day?

- 2.3 The “Common Organisation of the Markets in Agricultural Products” (“CMO”) is the framework for the functioning and administration of the Common Organisation of Agricultural Markets and is part of pillar 1 of the Common Agriculture Policy (“CAP”). CMO was set up as a means of meeting the objectives of the CAP (Article 40 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.

- 2.4 Organic food has been strictly regulated in the UK and in EU Member States by Council Regulation (EC) No 834/2007 and Commission Regulation (EC) No 1235/2008. The regulations set out the requirements for organic production, processing, labelling and imports, and the inspection systems that must be in place to ensure the requirements are met. The regulations apply to organic food, feed and vegetative propagating material or seeds for cultivation.
- 2.5 Commission Regulation (EC) No 1295/2008 on the importation of hops from third countries sets out the marketing and certification requirements as well as the processes that must be in place to ensure the requirements are met.
- 2.6 Commission Implementing Regulation (EU) No 543/2011 in respect of the fruit and vegetables and processed fruit and vegetables sectors set out rules on classification of products, checks on conformity to marketing standards and methods of inspection.

Why is it being changed?

- 2.7 The transitional provisions with regard to marketing standards and organics import requirements, contained in the retained EU legislation, were amended before the end of the transition period to support continued trade and minimise border disruptions. These were in line with the wider plans outlined in the Government's Border Operating Model. Implementation of some marketing standards and organics requirements remain dependent on Border Control Posts being in operation, while for others there is a dependency on customs import declarations.
- 2.8 In a Written Ministerial Statement on 11 March 2021, a change in the position regarding border controls was announced. Ministers took a considered view that original border control timescales were based on the then understanding of the Covid-19 impact and that subsequent experience of the scale of the pandemic requires that businesses need additional time to prepare. This meant that SPS requirements for imports were going to be deferred. In order to align with this change in position, the implementation of marketing standards and organics import requirements for EU goods will be delayed. As such, the original transitional periods are no longer an appropriate timeframe in which to transition to the new legal framework.

What will it now do?

- 2.9 This instrument will use powers in the European Union (Withdrawal) Act 2018 to make operability amendments to retained EU and domestic legislation in order to ensure that the timeframes for introducing marketing standards and organics certification requirements for EU goods are appropriate. The existing transitional provisions will, with the exception of those applying to fruit and vegetables, be extended in order to align these with the deferment of SPS border controls and to provide more time for industry to adjust.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 On 26th May 2021, 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 the 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 Part 2 of this instrument is the UK, whereas the territorial extent of Part 3 of the instrument is Great Britain.
- 4.2 The territorial application of Part 2 of this instrument is Great Britain. The territorial application of Part 3 of this instrument is Great Britain.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for Farming, Fisheries and Food, Rt Hon Victoria Prentis MP has made the following statement regarding Human Rights:

“In my view the provisions of the “The Common Organisation of the Markets in Agricultural Products (Transitional Arrangements) (Amendment) Regulations 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The European Union (Withdrawal) Act 2018 provides for the retention of most EU law as it stands at the moment of the end of the transition period in domestic law as ‘retained EU law’. It also confers temporary powers to make secondary legislation, to enable corrections to be made to retained EU law that would be deficient or would otherwise no longer operate effectively following the end of the transition period.
- 6.2 As the original transitional provisions do not operate in an appropriate way for the purpose of completing the correction of the deficiency found in EU retained law that was made prior to the end of the transition period, they will need to be amended.
- 6.3 “The Common Organisation of the Markets in Agricultural Products (Transitional Arrangements) (Amendment) Regulations 2021” will amend both retained EU law and domestic legislation.

7. Policy background

What is being done and why?

- 7.1 The existing transitional provisions concerning wider border controls were drafted based on the then understanding of impact on industry, in the context of the Covid-19 pandemic. Subsequent experience of the scale of this pandemic has highlighted that businesses require additional time to ensure readiness for the introduction of checks at the border. As such, on 11 March 2021, the Government announced the deferment of SPS controls which were to be introduced following the end of the transition period.
- 7.2 Marketing standards establish detailed rules with regard to the quality of agricultural products and providing product information to consumers. They are intended to make sure that products offered to consumers are accurately and consistently labelled, of acceptable quality, and that unsatisfactory produce is kept off the market.

- 7.3 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 11 March announcement, the existing transitional provisions for marketing standards and organics are being changed in order to reflect the revised timeframe for SPS border checks.
- 7.4 This instrument will implement this change by introducing technical amendments to the relevant retained EU and domestic legislation regarding hops and hop products, wine, fruit and vegetables and organic products. In most cases, the introduction of import requirements was established to be on 1 July 2021, a date that will now be amended to 1 January 2022. For fruit and vegetables, the transitional provision was set for a period of two years beginning on the day after that on which implementation period ("IP") completion day falls. This will now be amended to 1 March 2022, to bring it in line with plant health checks and, as such, offer clarity to industry.
- 7.5 These changes have been communicated to industry, as well as to the EU Commission. There are implications associated with not delivering this instrument in time for 1 July 2021. EU exports of hops, wine and organic products to GB would be halted, while also attracting a considerable amount of media attention and controversy, compromising the UK's reputation as a trading partner.

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

- 8.1 This instrument is being made using the powers in section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 in order to address failures of retained EU and domestic 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 the Annex to this Explanatory Memorandum.

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 engaged with industry representatives to familiarise them with the proposed changes to import requirements made under this instrument.
- 10.3 Defra has also engaged with 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 this only makes technical amendments to the retained EU and domestic legislation. However, the Government has published guidance on the Border Operating Model and the relevant changes to import requirements introduced by this instrument have been published 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 An Impact Assessment has not been prepared for this instrument because the SI makes amendments that are technical in nature, in order to complete the correction of deficiencies found in retained EU and domestic law.

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. The transitional provisions relating to documentation requirements or processes are being amended in order to provide extended time for businesses to adjust.

14. Monitoring & review

- 14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required. Defra and its agencies will, however, 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.

15. Contact

- 15.1 Ana Tudose at the Department for Environment, Food and Rural Affairs Telephone: 0208 0266571 or email: ana.tudose@defra.gov.uk can be contacted with any queries regarding the 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 Rt Hon Victoria Prentis 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. |

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|---|--|---|--|
| Criminal offences | Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7 | Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence | Set out the 'good reasons' for creating a criminal offence, and the penalty attached. |
| 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 Parliamentary Under Secretary of State for Farming, Fisheries and Food, Rt Hon Victoria Prentis MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Common Organisation of the Markets in Agricultural Products (Transitional Arrangements) (Amendment) Regulations 2021 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 instrument makes wholly technical amendments, to ensure the operability of retained EU and domestic law following the end of the transition period. The amendments complete the corrections of deficiencies found in retained EU legislation, so that the appropriate timeframe in which to transition to the new legal framework is implemented.

2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State for Farming, Fisheries and Food, Rt Hon Victoria Prentis MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Common Organisation of the Markets in Agricultural Products (Transitional Arrangements) (Amendment) Regulations 2021 does no more than is appropriate”.

- 2.2 This is the case because the amendments made by this instrument are the minimum required to ensure that retained EU and existing domestic legislation remain operable. The amendments are technical in nature and do no more than is strictly necessary to ensure that UK law continues to function effectively.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State for Farming, Fisheries and Food, Rt Hon Victoria Prentis 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 retained EU and existing domestic legislation are necessary to ensure that the transitional provisions can continue to operate seamlessly and in line with the Government’s wider border controls plans.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State for Farming, Fisheries and Food, Rt Hon Victoria Prentis 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 Parliamentary Under Secretary of State for Farming, Fisheries and Food, Rt Hon Victoria Prentis MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Victoria Prentis, 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.