

EXPLANATORY MEMORANDUM TO

THE ORGANIC PRODUCTION (AMENDMENT) (NO.2) REGULATIONS 2022

2022 No. 1279

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 His Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this statutory instrument is to extend the dates until which derogations are or may be authorised for the introduction of non-organic pullets (young chickens) into organic flocks for egg production, the use of up to 5% non-organic protein feed for pigs and poultry, and the use of non-organic high acyl gellan gum in organic food production.
- 2.2 The derogations relating to pullets and protein feed are due to expire on 31 December 2022. Since there is currently insufficient supply of organic pullets and protein feed available to the market in Great Britain, this statutory instrument extends these derogations until 31 December 2025. This statutory instrument extends the derogation for the use of non-organic gellan gum until 1 January 2026. There is a critical business need to extend these derogations to continue to support businesses, otherwise many organic egg producers and organic food producers will no longer be able to produce organically. This will allow organic production to continue undisrupted until the sector can produce organically.

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 extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Scotland.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales and Scotland.

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 This instrument makes amendments to retained EU legislation.
- 6.2 Under Article 22 of Council Regulation (EC) No 834/2007, derogations to the rules of organic production may be authorised where certain criteria are met. These criteria

include a lack of availability of organically reared livestock, organic feed or organic ingredients.

- 6.3 These derogations are implemented by Commission Regulation (EC) No 889/2008. Article 42(b) of that Regulation permits the use of non-organic pullets for egg production up to the age of 18 weeks, when organically reared pullets are unavailable. This instrument extends the derogation to 31 December 2025.
- 6.4 Article 43 of Regulation 889/2008 permits the use of up to 5% of non-organic protein feed for pigs and poultry until 31 December 2022. This instrument extends the derogation until 31 December 2025, to allow the organic industry to research and source alternative proteins. This research will feed into a future update of organic legislation.
- 6.5 Annex 8 of Regulation 889/2008 requires gellan gum, a food additive, to be derived from organic sources from 1 January 2023. Since there are still insufficient sources of organic gellan gum available to producers in Great Britain, this instrument extends that derogation until 1 January 2026.
- 6.6 The functions in Council Regulation (EC) No 834/2007 under which this instrument is made are generally exercisable so that Devolved Governments can make their own regulations where the matter is devolved, while the Secretary of State can make regulations where matters are reserved. In certain cases, in areas of devolved competence where a GB-wide approach may be preferable, the Secretary of State can exercise the function for the whole of GB with the consent of the Devolved Governments.

7. Policy background

What is being done and why?

- 7.1 Derogations which allow the use of non-organic pullets, 5% non-organic protein feed for pigs and poultry, and non-organic gellan gum in organic production are being extended.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.2 Commission Regulation (EC) No 889/2008 permitted derogations for the use of non-organic pullets, up to 5% non-organic protein feed granted until 31 December 2022, and non-organic gellan gum to be granted until 1 January 2023.

Why is it being changed?

- 7.3 Pullets are young chickens which will mature into laying hens. There are insufficient organically reared pullets for egg production available, both in terms of quality and quantity, on the GB market.
- 7.4 In discussions with the British Egg Industry Council, organic Control Bodies and key sector stakeholders, the sector has clear intentions to invest and improve the organic pullet sector. However, this cannot be done without establishing organic pullet standards, or setting a firm date for changes resulting from the review of GB's organic regulations to be implemented. Businesses have noted that due to the land certification requirements (conversion to organic farming takes up to 2 years) and structural changes to poultry houses (i.e., pop-holes to access the outdoor space) a minimum of

3 years would be required. Since there continues to be a shortage of organically reared pullets on the market, this statutory instrument extends the derogation until 31 December 2025.

- 7.5 The non-organic protein feed derogation was introduced based on the recognition that feeding animals a 100% organic diet can put a considerable strain on the organics pigs and poultry sectors as well as broader constraints of nutritional requirements and resulting welfare issues.
- 7.6 A 100% organic diet can put considerable strain on the organic pigs and poultry sectors. In the UK, we are unable to produce a sufficient amount of organic grain of a high enough protein level to meet the nutritional requirements of organic pigs and poultry. The UK therefore imports a large proportion of the grain used to produce organic pig and poultry feed from Russia, Ukraine and Kazakhstan. Pigs and poultry need to have a balanced level of amino acids (protein) to meet their nutritional requirements and keep them healthy. If they do not receive the correct level of protein in their diet, they are forced to look elsewhere for this source. For poultry, this can lead to birds pecking other birds resulting in a high mortality rate within the flock. For pigs, the lack of organically available amino acids can result in an un-balanced diet which places unnecessary stress on their metabolic system.
- 7.7 Non-organic gellan gum, commonly used to bind, stabilise or texturize processed food, has been permitted as an additive in the processing of organic foods since 2016; however, this permission is time-limited in Regulation (EC) No 889/2008. There continues to be an insufficient supply of organic gellan gum available to the GB market. Organic operators may face disruption if this derogation is not extended, as they will struggle to source it in its organic form.
- 7.8 The Department for Environment, Food and Rural Affairs are planning a comprehensive review of the retained EU organic regulations and will work with the Scottish and Welsh Devolved Governments, via the organics Four Nations Working Group, to develop a new, more fit for purpose system of GB organic regulations that will address the issues around the derogations. The programme will include formal public consultation.

What will it now do?

- 7.9 It will permit derogations to be authorised for the use of non-organic pullets, up to 5% non-organic protein feed, and non-organic gellan gum until 31 December 2025 and 1 January 2026 respectively.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument amends retained European legislation but does not use powers or trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 This is not a consolidating instrument.

10. Consultation outcome

- 10.1 Targeted consultation of the Scottish and Welsh Governments was carried out via the organics Four Nations Working Group. This instrument, and the policy reflected within it, has been developed in collaboration with officials in the Scottish and Welsh

Devolved Governments. These amendments to retained Regulation (EC) No 889/2008 will not apply to Northern Ireland.

- 10.2 The organic Control Bodies in Great Britain and the United Kingdom Organic Certifiers Group (UKOCG), which is the main industry stakeholder group for organics have expressed support for the measure.
- 10.3 Due to the limited scope of this statutory instrument, a full public consultation was not considered appropriate.

11. Guidance

- 11.1 The extension of these derogations will be communicated to the UK organic Control Bodies, who will disseminate the information to operators.
- 11.2 As this amendment is made with the consent of the Devolved Governments, they are aware of the impacts it will have. No further guidance is needed.

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 there is a very low level of impact on businesses: this statutory instrument will permit operators to continue using non-organic pullets, up to 5% non-organic protein feed, or non-organic gellan gum, as they have done.

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, as this statutory instrument does not alter the regulatory burden. Extending these derogations will prevent cost impacts, which could disproportionately affect small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is continued liaison with the relevant stakeholders to ensure the legislation is working as intended.
- 14.2 The instrument does not include a statutory review clause, because the expected impact on businesses is significantly below £5 million and a review would be disproportionate.
- 14.3 The impacts of this legislation will be reviewed by Defra and the Scottish and Welsh Devolved Governments via the Four Nations Working Group in 2025 when deciding whether it will be necessary to further extend the derogations.

15. Contact

- 15.1 Poppy Mist at the Department for Environment, Food and Rural Affairs. Telephone: 02078955425 or email: poppy.mist@defra.gov.uk can be contacted with any queries regarding the instrument.

- 15.2 Balwinder Dhoot, Deputy Director for Farming Food Sectors and Trade at the Department of the Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rt Hon Mark Spencer MP, Minister of State for Food at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.