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Finlay Carson MSP
Convener of the Rural Affairs, Islands and Natural
Environment Committee
Scottish Parliament
Edinburgh
EH99 1SP

24 June 2022

Dear Finlay,

SI AFC/026 - The Common Organisation of the Markets in Agricultural Products (Marketing Standards and Organic Products) (Transitional Provisions) (Amendment) Regulations 2022.

EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to proposals by the Scottish Ministers, to consent to the making of UK secondary legislation affecting devolved areas arising from EU Exit.

That protocol, as agreed between the Scottish Government and then Parliament, accompanied the letter from the Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 4 November 2020 and replaced the previous protocol that was put in place in 2018.

I now write to confirm the details of the Statutory Instrument (“SI”) which the UK Government laid before Parliament on 7 June 2022, without seeking consent from the Scottish Ministers.

The UK Government’s position is that this SI relates to reserved matters and so they did not write to request the consent of Scottish Ministers to the Common Organisation of the Markets in Agricultural Products (Marketing Standards and Organic Products) (Transitional Provisions) (Amendment) Regulations 2022 (SI AFC/026). This position is disputed by Scottish Ministers, who consider that their consent is needed for UK Government Ministers to make the AFC/026 Regulations. and Scottish Government officials have written to officials within the UK Government’s Department for the Environment, Food and Rural Affairs (Defra) to express this view.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot



The SI amends relevant retained EU law and domestic legislation to extend grace periods concerning import requirements for organics and marketing standards for hops and poultrymeat. The UK Government have further deferred import controls, which were due to be in place on 1 July 2022, to the end of 2023. This SI therefore extends the grace periods to 1 January 2024.

The Committee may wish to note that that the subject matter of the SI is very similar to the prior notifications in relation to the Common Organisation of the Markets in Agricultural Products (Marketing Standards and Organic Products) (Transitional Provisions) (Amendment) Regulations 2021 (SI 2021/1396) (also referred to as the CMO/002 Regulations) and the Common Organisation of the Markets in Agricultural Products (Transitional Arrangements) (Amendment) Regulations 2021 (SI 2021/652) (also referred to as the AG/042 Regulations).

The Scottish Government's position is that our consent should have been sought to these amendments as they relate to devolved matters.

We note that Defra has acknowledged that poultrymeat and hops are devolved matters, having previously sought Scottish Parliament consent in relation to the UK SIs as set out below:

- The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments etc.) (EU Exit) (No. 2) Regulations 2019 (CAP/09 now SI 2019/1422)
- The Market Measures (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2019 (CMO/06, now SI 2019/824)
- The Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2020 (CMO/18, now SI 2020/1453)

It is crucial that we ensure devolved interests are respected therefore I will also be writing to the UK Government Minister for Farming, Fisheries and Food, Victoria Prentis, MP to highlight my concerns on this matter. In the meantime, and in the spirit of being open and transparent with you, I attach details of the proposed SI AFC/026 for your consideration.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

I would be grateful if the Committee could note the notification accompanying this letter.

Yours sincerely,



MAIRI GOUGEON

NOTIFICATION TO THE SCOTTISH PARLIAMENT

SI AFC/026 - The Common Organisation of the Markets in Agricultural Products (Marketing Standards and Organic Products) (Transitional Provisions) (Amendment) Regulations 2022

1. Name of the instrument

The Statutory Instrument (“SI”) is The Common Organisation of the Markets in Agricultural Products (Marketing Standards and Organic Products) (Transitional Provisions) (Amendment) Regulations 2022 (also known as AFC/026).

2. Summary of the SI

The UK Government are intending to lay AFC/026 before Parliament on 7 June 2022. The SI amends relevant retained European Union (EU) law and domestic legislation to extend grace periods concerning import requirements for organics and marketing standards for hops and poultrymeat.

The Scottish Parliament has already considered the underlying policy regarding extension of grace periods, most recently as set out below:

- The Common Organisation of the Markets in Agricultural Products (Marketing Standards and Organic Products) (Transitional Provisions) (Amendment) Regulations 2021 (SI 2021/1396) (also referred to as the “CMO/002 Regulations”), which extended grace periods concerning import requirements for organics and marketing standards for hops, poultrymeat and fruit and vegetables.
- The Common Organisation of the Markets in Agricultural Products (Transitional Arrangements) (Amendment) Regulations 2021 (SI 2021/652) (also referred to as the “AG/042 Regulations”), which extended grace periods concerning import requirements for organics and marketing standards for hops, wine and fruit and vegetables.

The UK Government’s position is that the SI relates to reserved matters and they are therefore not requesting Scottish Ministers consent to the making of the AFC/026. The UK Government adopted the same position in relation to the CMO/002 Regulations and the AG/042 Regulations. The Scottish Government’s position is that those amendments relating to organics, hops and poultrymeat relate to devolved matters.

3. Explanation of law that the SI amends

The legislation amended by AFC/026 is:

- Retained EU law - Council Regulation (EC) No 834/2007 on organic production and labelling of organic products (EUR 2007/834);

- Retained EU law - Commission Regulation (EC) No 543/2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat (EUR 2008/543);
- Retained EU law - Commission Regulation (EC) No 1235/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries (EUR 2008/1235);
- Retained EU law - Commission Regulation (EC) No 1295/2008 on the importation of hops from third countries (EUR 2008/1295);
- Retained EU law - Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products (EUR 2013/1308);
- The Hops Certification Regulations 1979, in respect of Great Britain (SI 1979/1095).

AFC/026 amends retained EU and domestic legislation to extend grace periods concerning import requirements that apply to certain marketing standards. It will extend the grace periods applying to import requirements for (i) hops and hop products from the EU and certain third countries, (ii) poultrymeat with optional indications exported by the EU to Great Britain (“GB”) and (iii) organic products exported by the EU, European Economic Area (“EEA”) states and Switzerland to GB. AFC/026 extends the grace period to 1 January 2024 for all three groups of products.

The UK Government are making these amendments in light of rising costs to British people and businesses caused by Russia’s war in Ukraine and increasing energy prices, as was announced in a [Written Ministerial Statement on 28 April 2022](#). As a result, import controls for hops, organic products and poultrymeat with optional indications imported from the EU will not be introduced on 1 July 2022, as was originally intended. This is in order to avoid placing additional burden on British businesses and to ensure frictionless trade as the UK Government continue to work towards long term solutions as part of the wider 2025 Borders Strategy.

The grace periods were originally set out by transitional provisions in legislation, which were inserted into the legislation by EU Exit SIs. This was done to allow businesses additional time to prepare for the introduction of the relevant certification and inspection requirements following the UK’s withdrawal from the EU.

These grace periods were then extended further by SI 2021/1396 to align with the revised timetable of 1 July 2022 for the introduction of sanitary and phytosanitary (SPS) border controls. The grace periods in respect of imports of organic products, poultrymeat and hops will therefore come to an end on 1 July 2022, AFC/026 will extend these to 1 January 2024.

In addition to the SIs noted above, previous advice has been provided on the following disputed SIs in relation to the following products (i.e. SIs which the UK

Government have laid, without seeking the consent of the Scottish Ministers, because the UK Government's position is that the SIs relate to reserved matters, whereas the Scottish Government's position is that some or all of the amendments are to provisions that relate to devolved matters):

Organics:

- AG/15 (now SI 2019/692 – The Organic Production (Control of Imports) (Amendment) (EU Exit) Regulations 2019)
- FD/07 (now SI 2020/1661 – The Agricultural Products, Food & Drink (Amendment) (EU Exit) Regulations 2020)

In addition to those referenced above, this advice should be considered alongside the following previously notified SIs containing organics provisions, which have been formally consented to by the Scottish Parliament –

- The Agriculture (Legislative Functions) (EU Exit) (No. 2) Regulations 2019 (AG-TF/02)
- The Organic Products (Amendment) (EU Exit) Regulations 2019 (AG/08)
- The Organic Production and Control (Amendment) (EU Exit) Regulations 2019 (AG/02)
- The Organic Products (Production and Control) (Amendment) (EU Exit) Regulations 2020 (AG/25)

Hops, wine and fruit and vegetables:

- CAP/07 (now SI 2019/828 – The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments)(EU Exit) Regulations 2019)
- CMO/17 (now SI 2020/1452 – The Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2020)
- FD/07 (now SI 2020/1661 – The Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2020)

Amendments to the Hops Certification Regulations 1979

- The amendments to the Hops Certification Regulations 1979 are to provisions made in SIs to which the Scottish Ministers' consent was sought (CMO/06 and CMO/18 – now SIs 2019/824 and 2020/1453).

4. Why are these changes necessary?

Since the laying of SI 2021/1396 (the CMO/002 Regulations), which extended the grace periods to 1 July 2022, the UK Government announced on 28 April 2022, through a Written Ministerial Statement, another deferment of border controls on EU imports until end 2023 due to rising costs to British people and businesses as a result of Russia's war in Ukraine and increasing energy prices. The purpose of the deferral is to avoid placing additional burden on British traders. This instrument

amends the transitional arrangements in legislation to end on 1 January 2024 in line with the announcement.

5. Impact on devolved areas

The Scottish Government has been able to reach agreement with the UK Government on legislative or administrative competence in many areas, however there are some areas of policy where this has not been possible. The SI includes such provisions.

SI AFC/026 will be laid without the Secretary of State obtaining consent to it from Scottish Ministers and seeks to make changes to the law in relation to organics, hops and poultrymeat.

These areas of dispute have already been highlighted previously to the Scottish Parliament through the non-notifications listed above, in particular the CMO/002 and AG/042 Regulations.

The SI does not contain any transfers of functions.

6. Does the SI relate to a common framework or other scheme?

A provisional Organics Framework Outline Agreement has been finalised and is currently undergoing Parliamentary scrutiny. The framework is intended to cover the principles and overarching standards for organic production and certification; Official controls, labelling and trade of organic produce; and organic aquaculture.

A provisional Agriculture Support Framework has also been finalised and is currently undergoing Parliamentary scrutiny. The scope of the framework covers working arrangements between the four administrations on future agricultural support now that the UK has left the EU and the Common Agricultural Policy (CAP). Specific elements of agricultural support covered in this framework are:

- Agricultural spending;
- Marketing standards;
- Crisis measures, Public Intervention (PI) and Private Storage Aid (PSA);
- Cross border holdings (within the UK);
- Data collection and sharing

7. Stakeholder engagement/consultation

The UK Government did not undertake consultation for the amendments being made under this instrument but has communicated the changes to industry to familiarise them with the proposed changes to import requirements made under this instrument.

8. Any other impact assessments?

No other impact assessments have been carried out and the UK Government do not intend to produce an impact assessment for the SI.

9. Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

Scottish Parliamentary consent has not been sought by the UK Government for the laying of the SI as it is the position of the UK Government that these provisions are reserved.

Scottish Ministers consider that the SI includes devolved provisions. Scottish Government officials have written to colleagues within Defra advising that it is the Scottish Government's position that the SI contains devolved provisions.

10. Intended UK laying date

The UK Government laid the SI before Parliament on 7 June.

11. Information about any time dependency associated with the proposal

There is no time dependency associated with the SI.

12. Any significant financial implications?

There are no financial implications associated with the SI.

SI NOTIFICATION: SUMMARY

Title of Instrument SI AFC/026 - The Common Organisation of the Markets in Agricultural Products (Marketing Standards and Organic Products) (Transitional Provisions) (Amendment) Regulations 2022.
Proposed laying date at Westminster The UK Government laid the SI before Parliament on 7 June.
Date by which Committee has been asked to respond N/A as the UK Government's position is that the SI relates to reserved matters and are therefore not requesting Scottish Ministers consent. The Committee are asked to note the background information in the notification.
Power(s) under which SI is to be made Articles 89(a) and 227(4) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products and sections 38(5) and 50(3) of the Agricultural Act 2020.
Categorisation under SI Protocol N/A
Purpose The SI amends relevant retained EU law and domestic legislation to extend grace periods concerning import requirements for organics and marketing standards for hops and poultrymeat. These amendments are being made in light of rising costs to British people and businesses caused by Russia's war in Ukraine and increasing energy prices, as was announced by the UK Government in a Written Ministerial Statement on 28 April 2022. As a result, import controls for hops, organic products and poultrymeat with optional indications imported from the EU will not be introduced on 1 July 2022, as was originally intended, in order to avoid placing additional burden on British businesses and to ensure frictionless trade as the UK Government continue to work towards long term solutions as part of the wider 2025 Borders Strategy. This SI extends the grace periods to 1 January 2024.
Other information N/A
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