

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

21 June 2022

Dear Finlay,

**AFC012 (AG015) The Common Organisation of the Markets in Agricultural Products (Third Country Listing for Fruit and Vegetables) (Amendment, etc.) 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 write to advise of a Statutory Instrument (SI) which the UK Government has laid before Parliament, without seeking consent from the Scottish Ministers. The attached SI non-Notification and SI Summary set out the details of the SI which the UK Government laid before Parliament on 7 June 2022, subject to the negative resolution procedure, and which will come into force on 1 July 2022.

The UK Government's position is that the SI relates to reserved matters and as such they did not write to request the consent of Scottish Ministers. This position is disputed by Scottish Ministers who consider that the SI relates to devolved matters. Scottish Government officials have written to colleagues within the UK Government's Department for the Environment, Food and Rural Affairs (Defra) advising of the Scottish Government's position that the SI relates to devolved matters, and that consent should have been sought.

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

The SI makes regulations under powers in the retained European Union (“EU”) law Commission Implementing Regulation (EU) No 543/2011 (“the retained fruit and vegetable Regulation”) to grant the EU Member States Approved Inspection Service (AIS) status for fruit and vegetables subject to marketing standards, and amends the list of third countries approved for conformity checks in the retained fruit and vegetable Regulation. It will approve the checks on conformity to marketing standards for fruit and vegetables carried out prior to import into Great Britain by the EU Member States and will add the Listed Member States to Annex 4 of the retained fruit and vegetable Regulation and set out the scope of products covered within that listing. This will allow Certificates of Conformity (CoCs) issued by official authorities and their associated inspection bodies to be used for release into free circulation on entry to Great Britain, without requiring a domestic CoC to be issued. The SI will therefore bring an end to the ‘grace period’ originally set out by the transitional provisions in legislation during which an EU CoC could be used for import of EU fruit and vegetables into GB without the need for third country listing, and replace it with AIS status for EU Member States through third country listing.

The effect of the SI is consistent with Scottish Government policy, and hence it is likely that Scottish Ministers would have recommended consenting to the SI in a notification to the Scottish Parliament.

The Scottish Government’s position is that this SI relating to fruit and vegetable marketing standards relates to devolved matters. This area of dispute has already been highlighted previously to the Scottish Parliament through the non-notifications listed in the attached.

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 SI 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**

# **AFC012 (AG015) The Common Organisation of the Markets in Agricultural Products (Third Country Listing for Fruit and Vegetables) (Amendment, etc.) Regulations 2022**

## **1. Name of the instrument**

The SI is [The Common Organisation of the Markets in Agricultural Products \(Third Country Listing for Fruit and Vegetables\) \(Amendment, etc.\) Regulations 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

## **2. Summary of the SI**

The UK Government laid the SI before Parliament on 7 June 2022. The SI makes regulations under powers in retained EU Commission Implementing Regulation (EU) No 543/2011 (“the retained fruit and vegetable Regulation”) to grant the EU Member States Approved Inspection Service (AIS) status for fruit and vegetables that are subject to marketing standards, and amends the list of third countries approved for conformity checks in the retained fruit and vegetable Regulation. It will approve the checks on conformity to marketing standards for fruit and vegetables carried out prior to import into Great Britain by the EU Member States. Annex 4 to the retained fruit and vegetable Regulation will be updated by the SI to include the Listed Member States and set out the scope of products covered within that listing.

The third countries listed in Annex 4 are able to issue their own Certificate of Conformity (“CoC”) for the purpose of importing fruit and vegetables subject to marketing standards into Great Britain. This will allow CoCs issued by official authorities and their associated inspection bodies to be used for release into free circulation on entry to Great Britain, without requiring a domestic CoC to be issued.

This SI will add the EU Member States to the list of third countries approved for fruit and vegetable conformity checks, and whose own CoC can be used. Previously a grace period was set by EU Exit legislation during which an EU CoC could continue to be used for import of EU fruit and vegetables into GB without the need for third country listing. That grace period was subsequently extended, but expires on 1 July 2022. The SI will therefore bring an end to the grace period originally set out by the transitional provisions in legislation during which an EU CoC could continue to be used for import of EU fruit and vegetables into GB without the need for third country listing, and replace it with AIS status for EU Member States through third country listing. This listing will allow for a reduced requirement for physical checks at the border for fruit and vegetable imports from the listed Member States to Great Britain.

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 SI. The UK Government adopted the same position on previous SIs in relation to the above provisions of the retained fruit and vegetable Regulation. The Scottish Government’s position is that the SI relates to devolved matters. Scottish Government officials have written to colleagues within the UK Government’s Department for the Environment, Food and Rural Affairs (Defra) advising it is the Scottish Government’s position that the SI relates to devolved matters and that consent should have been sought.

However, although consent has not been sought in this instance, the effect of the SI is consistent with Scottish Government policy.

### **3. Explanation of law that the SI amends**

The legislation amended by the SI is:

- Retained EU law - Commission Implementing Regulation (EU) No 543/2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors (EUR 2011/543).

Previous advice has been provided to the Scottish Parliament in relation to the following disputed SIs which amended the retained fruit and vegetable Regulation relating to import and Certificates of Conformity (disputed SIs being where the UK Government have not sought consent because their 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). This advice should be read alongside advice on these previous disputed SIs:

- The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019 (also referred to as the "CAP/07 Regulations");
- 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 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").

### **4. Summary**

The SI makes regulations under powers in the retained fruit and vegetable Regulation to grant the EU Member States Approved Inspection Service (AIS) status for fruit and vegetables that are subject to marketing standards and amends the list of third countries approved for conformity checks in the retained fruit and vegetable Regulation. It will approve the checks on conformity to marketing standards for fruit and vegetables carried out prior to import into Great Britain by the EU Member States. Annex 4 to the retained fruit and vegetable Regulation will be updated by the SI to include the Listed Member States and set out the scope of products covered within that listing.

### **5. Why are these changes necessary?**

Without the third country listing status provided by this SI, imports of fruit and vegetables from non-listed EU Member States will be assessed as higher risk on import and therefore may be subject to an increased rate of physical inspections at the border on entry into Great Britain. This SI will enable imports of fruit and vegetables subject to marketing standards from Listed EU Member States accompanied by a CoC

to be used for release into free circulation on entry to Great Britain, without requiring a domestic CoC to be issued.

## **6. 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.

The effect of these amendments is consistent with Scottish Government policy, however the Scottish Government's position is that the SI relates to devolved matters.

This area of dispute has already been highlighted previously to the Scottish Parliament through the non-notifications listed above.

The SI does not contain any transfers of functions.

## **7. Does the SI relate to a common framework or other scheme?**

An Agriculture Support Framework is in the advanced stages of development. 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). Marketing standards is one of the specific elements covered in this framework.

## **8. Stakeholder engagement/consultation**

The UK Government has consulted with vegetable traders and growers as per the requirement to consult under Article A149 of the retained fruit and vegetable Regulation. This was conducted using a targeted stakeholder consultation by way of letter and invitation to respond and disseminated to relevant parties in July/August 2021 for four weeks, and a further four weeks in January/February 2022. No objections were raised to listing EU Member States for fruit and vegetables. Stakeholders were informed of the outcome of the consultation, and decision to make this instrument, in a follow-up letter on 26 May 2022.

## **9. 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.

## **10. 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.

**11. Intended UK laying date**

The SI was laid before the UK Parliament on 7 June 2022, subject to the negative resolution procedure, and will come into force on 1 July 2022.

**12. Information about any time dependency associated with the proposal**

There is no time dependency associated with the SI.

**13. Any significant financial implications?**

There are no financial implications associated with the SI.

## SI NOTIFICATION: SUMMARY

<b>Title of Instrument</b>
The Common Organisation of the Markets in Agricultural Products (Third Country Listing for Fruit and Vegetables) (Amendment, etc.) Regulations 2022
<b>Laying date at Westminster</b>
7 June 2022
<b>Date by which Committee has been asked to respond</b>
N/A
<b>Power(s) under which SI is to be made</b>
Articles 15(1) and A149 of Commission Implementing Regulation (EU) No 543/2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors.
<b>Categorisation under SI Protocol</b>
N/A
<b>Purpose</b>
<p>This new Statutory Instrument will grant the EU Member States Approved Inspection Service (AIS) status for fruit and vegetables that are subject to marketing standards, and amends the list of third countries approved for conformity checks in the retained EU fruit and vegetable Regulation. In particular, this legislation:</p> <ul style="list-style-type: none"><li>• Grants the EU Member States Approved Inspection Service (AIS) status for fruit and vegetables that are subject to marketing standards.</li><li>• Amends Annex 4 to the retained EU fruit and vegetable Regulation to include the Listed Member States and sets out the scope of products covered within that listing.</li><li>• Brings to an end to the grace period originally set out by the transitional provisions in legislation during which an EU Certificate of Conformity (CoC) could continue to be used for import of EU fruit and vegetables into GB without the need for third country listing, and replace it with AIS status for EU Member States through third country listing.</li></ul>
<b>Other information</b>
<b>SG Policy contact:</b> John Speirs