

T: 0300 244 4000
E: scottish.ministers@gov.scot

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

8 November 2022

Dear Finlay,

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

Thank you for your letter, dated 1 November, relating to The Organic Production (Amendment) Regulations (No. 2) 2022 (“the Regulations”). Please find below responses to your questions.

Please explain whether the extensions to each of the three derogations diverge from the current EU position, or are likely to diverge from forthcoming EU legislation during the new derogation period to 31 December 2025. Please clarify the EU positions for each of these derogations.

Non-organic pullets

Article 42(b) of Commission Regulation (EC) No 889/2008 permits the use of non-organic pullets for egg production up to the age of 18 weeks, when organically reared pullets are unavailable. Regulation 2(2) of the Regulations amend Article 42(b) of Regulation (EC) No 889/2008 so as to provide that in GB until 31st December 2025, non-organically reared pullets of not more than 18 weeks may be introduced into an organic flock for egg production when organically reared pullets are not available, subject to conditions.

EU position

The EU does not have a derogation in place to allow non-organically reared pullets for egg production of not more than 18 weeks to be brought into an organic livestock unit (when organically reared pullets are not available). However, both the EU and UK have derogations in place (without time limits) to allow, where a flock is constituted for the first time, and renewed or reconstituted and organically reared poultry are not available in sufficient numbers, non-organically reared poultry to be brought into an organic poultry production unit, provided that the pullets for the production of eggs and poultry for meat production are less than three days old.

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

St Andrew’s House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

The proposed extension in the Regulations to the derogation in relation to non-organically reared pullets of not more than 18 weeks will therefore diverge from the current EU position.

We are not aware of any forthcoming EU legislation relating to non-organic pullets in the period up to 31 December 2025.

Non-organic protein feed for pigs and poultry

Article 43 of Regulation 889/2008 permits the use of non-organic protein feed for pigs and poultry until 31 December 2022. Regulation 2(3) of the Regulations amend Article 43 of Regulation (EC) No 889/2008 so as to provide that, where farmers are unable to obtain protein feed for porcine and poultry species exclusively from organic production, up to 5% of non-organic protein feed may be used in each period of 12 months for the calendar years 2023, 2024 and 2025.

EU position

The EU has derogations in point 1.9.3.1(c) and 1.9.4.2(c) of Part II of Annex II to Regulation (EU) 2018/848, which allow farmers, where they are unable to obtain protein feed for pigs and poultry exclusively from organic production, to use non-organic protein feed until 31 December 2026. This is subject to certain conditions, including that the maximum percentage authorised per period of 12 months for those animals does not exceed 5% and that its use is limited to the feeding of young poultry or piglets of up to 35kg with specific protein compounds. However, as a result of the war in Ukraine and its effect on the supply of organic protein feed to EU Member States, the EU's Commission Delegated Regulation (EU) 2022/1450 allows Member States to extend the derogations to 1.9.3.1(c) and 1.9.4.2(c) to categories of older porcine animals and poultry, for a period of up to 12 months.

The proposed extension in the Regulations by the UK to the derogation in relation to the use of non-organic protein feed of plant and animal origin for livestock is a derogation for 3 years and is therefore shorter than the EU's derogation in Regulation (EU) 2018/848. The proposed extension by the UK to the derogation does not apply to protein feed intended for porcine animals and poultry of a certain age. In that respect it is in line with Regulation (EU) 2022/1450, which applies the derogation to protein feed intended for all ages of porcine animals and poultry. We also note the proposed extension by the UK to the derogation permits the use of up to 5% of non-organic protein feed for pigs and poultry, as set out in Regulation (EU) 2018/848.

We are not aware of any forthcoming EU legislation to further extend the derogation as a result of the war in Ukraine, though we note this is possible should the current lack of availability of organic protein feed continue.

Gellan gum

Annex 8 of Regulation 889/2008 requires gellan gum, a food additive, to be derived from organic sources from 1 January 2023. Regulation 2(4) of the Regulations amend the table in Section A of Annex 8 of Regulation (EC) No 889/2008, which lists food additives which may be used in the processing of organic food, subject to conditions and restrictions. It amends the entry relating to E418, gellan gum, to provide that from 1st January 2026 only organically produced gum, in its high acyl form, may be used in processing organic food.

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

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

INVESTORS IN PEOPLE
We invest in people Silver



EU position

Commission Implementing Regulation (EU) 2021/1165 requires organic sources of gellan gum to be used in organic production from 1 January 2023.

The proposed extension by the UK to the derogation in relation to non-organic sources of gellan gum will therefore diverge with the current EU position from 1 January 2023.

We are not aware of any forthcoming EU legislation in relation to non-organic sources of gellan gum in the period up to 31 December 2025, however we note the EU's derogation has been extended a number of times and it may therefore be extended for a further period.

With regards to the divergence from current EU policy relating to non-organic pullets and gellan gum, the Scottish Government recognises that we have a responsibility to take decisions to achieve the best outcomes for both standards and the domestic economy. Failure to extend the derogations contained in the Regulations will result in financial and operational consequences for Scottish organic producers. Therefore we do not see temporary divergence from the EU as an issue at this time.

Please indicate whether any implications are expected from the extension of these derogations on the reassessment of equivalence between UK and EU organic regulations in 2023, and whether there has been communication on this point with the EU.

Defra have advised that there should be no impact on the equivalence arrangement with the EU as a result of this SI. In accordance with the organics annex in the UK-EU Trade and Cooperation Agreement (TCA), Defra (as competent authority) keep the EU updated on changes to the GB organics regime.

The notification states that “Defra are planning a comprehensive review of the retained EU organic regulations with a view to developing a new, more fit for purpose system of GB organic regulations that will address the issues around the derogations”, and notes that this is expected to take “a good 18 months”.

- **Please clarify how this timescale is compatible with the completion of the equivalence assessment which is due to be concluded in 2023.**
- **Please explain how this timescale will cohere with the proposed 31 December 2023 sunset clause in the UK Retained EU Law (Revocation and Reform) Bill.**

Defra have advised the equivalence assessment, due to be completed in 2023, will be based on existing UK regulations as it will be too early to make an analysis based on an ongoing review of our regulations. The Scottish Government does not expect Defra's review to be completed by 31 December 2023. Any changes to the UK regime made after the assessment will continue to be considered equivalent to EU regime unless the EU objects in accordance with the procedure set out in Annex 14 of the TCA.

On Tuesday 8 November the Scottish Government lodged a legislative consent memorandum for the Retained EU Law (Revocation And Reform) Bill which is published at [Retained EU Law \(Revocation and Reform\) Bill | Scottish Parliament Website](#). It will be noted from the memorandum that the Scottish Government believes that the Parliament should not give consent to the Bill because of risks posed by the 31 December 2023 sunset provision. Given that the Bill awaits amending stages and the Scottish Government seeks the removal of the sunset provision, we consider that policy for organic production and other devolved, Scottish Retained EU Law (REUL) matters should progress without regard to the Bill as it stands. We will of course adapt our approach should the Bill be enacted with application to devolved, Scottish REUL, with regard to the then final form of the Bill. Both Scottish and UK Ministers are proposed to have concurrent powers under clause 1(2) of the Bill to preserve specific devolved, Scottish REUL.

Defra have advised that due to the planned review and subsequent reforming of the UK retained EU organic policy regulations, they intend to apply for an extension to the 31 December 2023 sunset clause.

The Committee understands exceptions from organic production rules made under article 22(1) of Council Regulation (EC) 834/2007 in retained EU law must be kept to a minimum and, where appropriate, be limited in time. Please explain how this requirement is satisfied in respect of the three proposed derogations, particularly with reference to the chosen end date of 31 December 2025.

Non-organic pullets

There are insufficient organically reared pullets for egg production available, both in terms of quality and quantity, on the UK market. This is a problem recognised by the industry and, through discussions with Defra, the sector and key stakeholders have noted their clear intention to invest and improve the organic pullet supply. 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. There are also a number of land certification and structural changes that must take place in order to allow this improvement to happen. The time required for these changes, including two years for the land conversion to organic farming, means a minimum of three years are required. Extending this derogation to 31 December 2025 allows sufficient time for the industry to invest and adapt.

Non-organic protein feed for pigs and poultry

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 organic pig and poultry sectors as well as broader constraints of nutritional requirements and resulting welfare issues.

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 and can lead to animal welfare issues. For poultry, this can include 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. As well as putting the animals' through unnecessary stress and ill health, this can also result in financial losses for organic farmers.

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

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

INVESTORS IN PEOPLE™
We invest in people Silver



The UK is currently 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. Therefore, the UK imports a large proportion of the grain used to produce organic feed from Russia, Ukraine and Kazakhstan. The Russian invasion of Ukraine is resulting in pressure on the supply chain of grain.

Extending the derogation to use up to 5% of non-organic protein will allow the industry time to research and source alternative proteins. The lack of a sufficient amount of organic grain of a high enough protein level means there is no benefit to Scotland adopting an alternative approach as the same limitations in supply would apply.

Gellan gum

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. Annex 8 of Regulation 889/2008 requires gellan gum to be derived from organic sources from 1 January 2023. However, there continues to be an insufficient supply of organic gellan gum available to the market for Great British producers. Organic operators may face disruption if this derogation is not extended, as they will struggle to source it in its organic form.

These derogations are necessary to support the UK organic sector as there are recognised, UK wide, shortages of organic pullets, protein feed and gellan gum. Extending the derogations for the three products, until 31 December 2025 coincides with the policy review and update of the organic regulations. The review of the retained EU organic regulations will inform future GB organic regulations which will address the issues around the derogations. The extension until 31 December 2025 will provide certainty and stability, especially important given the current economic picture (and for the duration of the review), and reduce potential financial impact for producers and operators who may be forced to make interim structural changes, helping to avoid potential disruption to organic food supply chains.

If the policy in Scotland was to not extend these derogations, then the sector in Scotland would be at a disadvantage as business would no longer be able to produce organically.

I hope the above response answers your questions and I look forward to hearing the Committee's decision by 21 November.

Yours sincerely,



MAIRI GOUGEON