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The Scottish Parliament
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Dear Finlay,

Thank you for your email of 21 February requesting further information in relation to the Organics (Derogations) (Amendment) Regulations 2022. Please find below responses to your questions.

1. Our understanding is that the existing derogations for the use of non-organic pullet hens and non-organic gellan gum expired on 31 December 2020 and 31 December 2021 respectively. **Is this correct?**

Yes.

2. If it is correct that the existing derogations have already expired, **what have producers been doing in the meantime while the derogation was not in force? Have they been able to source organic pullet hens and gellan gum in this period or have they continued to use non-organically produced versions of these products? If the latter is true, will the derogation be retrospective? Why has there been a gap in the derogation being in force?**

The UK retained all EU organic regulations at the end of the transition period. Where derogations expired at the end of the transition period, as was the case for non-organic pullets, those expiry dates were also retained, and required amendment (the Commission did not extend the derogation until 15 February 2021, after its expiry on 31 December 2020). In the meantime, producers have continued to use non-organically produced gellan gum and pullets.

Although the amendment is not retrospective, derogations for non-organic pullets have continued to be approved by Defra while the legislation is in the process of being amended, since there are no organic pullets available in the UK.

The use of gellan gum from non-organic sources is being extended in the legislation due to its continued lack of availability in an organic form, and producers have continued to use the non-organic form while the legislation is updated.

Amending the requirements for gellan gum brings GB in line with our major trading partners including the EU (which will similarly require only organic gellan gum to be used from 1 January 2023).

3. Exceptions made under article 22(1) of Regulation 834/2007 in retained EU law must be “kept to a minimum and where, appropriate, [be] limited in time” and may only be made in specific listed circumstances where they are “necessary”, including where organic versions are not available on the market. **Do these derogations continue to be necessary? Is there work underway to identify organic sources of these products in order that a derogation is not necessary?**

There are insufficient numbers of organically reared pullets available for egg production on the GB market. There continues to be an insufficient supply of organic gellan gum available to the GB market, and organic operators may face disruption if this derogation is not extended.

The organic sector is aware of the problems in sourcing organic pullets and that the narrower derogation offered in the EU Regulation 2018/848 provides impetus to make the necessary changes.

4. The derogations were originally made in EU regulations prior to EU exit. **Has the EU also extended the derogations for these products?**

Yes.

This extension for gellan gum will align GB with implementing legislation EU 2021/1165 for the new EU organics Regulation 2018/848, which requires the use of organic gum from 1 January 2023.

EU Regulation 2018/848 provides a derogation for the use of non-organic pullets but has not extended this in the same terms as previously applied in the EU i.e. it allows derogations for flocks constituted for the first time to have non-organically reared pullets of less than 3 days old. However, retained EU Regulation 889/2008, which this notification relates to, also allows for the use of non-organic pullets for egg production of not more than 18 weeks to be used in an organic livestock unit. It is this derogation that is being extended.

5. The notification says “In addition, the EU-UK Trade and Cooperation Agreement, governing the relationship between the EU and the UK, recognises retained EU laws relating to organics as equivalent.” **Is the suggestion here that the present instrument is connected with the UK’s international obligations under the TCA and the UK is therefore required to have the derogation in place? If not, could you expand on how this instrument relates to the TCA?**

The reference to the TCA was intended to provide additional background information but there is no direct link between the Organics (Derogations) (Amendment) Regulations 2022 and the TCA. The text in the notification was to expand on the benefits of fixing deficiencies in organics legislation on a GB wide basis, as is set out in the Organics Framework Outline Agreement.

6. The notification states “The United Kingdom Internal Market Act 2020 is applicable to the production and labelling of products. The principle of mutual recognition means that goods sold in one part of the UK must be automatically accepted across all other parts of the UK, regardless of the rules in that other part. This means that if Scotland were to apply different standards to organic production those rules would have limited effect since they could not apply to any products produced in any other part of the UK but then sold in Scotland. For that reason it would also seem appropriate to fix deficiencies in organics legislation on a GB wide basis, as is intended by the Organics Framework Outline Agreement.” **What does this mean in practice for future policy making?**

In practice future policy making will not change as the UKG, with the agreement of the administrations in Scotland, Wales and Northern Ireland, will continue to lead as the competent authority for GB for organics. There are recognised benefits to this as it means there is a consistent approach to organics policy and legislation on a GB wide basis. This working arrangement is reflected in the Organic Production Common Framework.

7. The notification describes the changes made by the proposed SI as “technical amendments”. However, it contains what appear to be policy decisions: to reinstate derogations which were previously in force but which the four administrations do not have an obligation to reinstate. **Is that a correct understanding of the situation? Could you expand on what you mean by ‘technical’ here?**

Yes, these are policy decisions to reinstate the derogations. The use of the term “technical” was used to reflect that these changes were minor as they were to changes dates. It may have been more clear to use the phrase “make minor amendments”.

Yours sincerely,



MAIRI GOUGEON