

## **NOTIFICATION TO THE SCOTTISH PARLIAMENT**

The Organics (Derogations) (Amendment) Regulations 2022

### **Is the notification Type 1 or Type 2**

Type 1

### **A brief overview of the SI (including reserved position)**

This SI (also known as the “AG/048 Regulations”) is made in exercise of the powers conferred by Articles 22(3) and 38b(8) of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products.

These Regulations amend Commission Regulation (EC) No 889/2008, implementing Council Regulation (EC) No 834/2007 on organic production and labelling of organic products. One of the functions of that Regulation is to specify the derogations to organic production rules which are permitted under Article 22 of Regulation (EC) No 834/2007: this may be necessary if organic substances or organically-reared livestock are not available on the market.

The UK Government intends to lay this instrument before Parliament on 23 March 2022.

### **Summary of the proposals**

The purpose of this instrument is to make technical amendments to retained European Union (EU) legislation to extend derogations to allow the use of specific non-organic substances or non-organically reared livestock where these are not available on the market. The current derogations have expired and this instrument is to remedy that situation.

This instrument extends the dates of derogations to organic production rules in relation to non-organically reared pullets and the use of Gellan gum.

#### *Non-organically reared pullets*

Article 42(b) of Regulation (EC) No 889/2008 permits non-organically reared pullets of no more than 18 weeks to be introduced into an organic flock, when organically-reared pullets are not available. Regulation 2(2) of this instrument extends that derogation to 31st December 2022.

#### *Gellan gum*

Annex 8 of Regulation (EC) No 889/2008 lists substances which may be used in the processing of organic food, with any applicable conditions. One of those listed is E418, Gellan gum: from 1st January 2022, only organically-produced gum may be used in processing organic food. Regulation 2(3) of this instrument applies this requirement from 1st January 2023. It is understood no sources of organic Gellan gum are currently available.

These Regulations extend to England and Wales and Scotland.

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

Yes, the instrument relates to the Organics Framework Outline Agreement that has been finalised and will be 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.

### **Summary of stakeholder engagement/consultation**

Defra has provided updates about this SI to the Four Nations Working Group and the UK Organic Control Group. As the extension of previous derogations is not a significant policy change, and since the lack of organic Gellan gum and pullets is a known issue, there has been no stakeholder consultation beyond this.

### **A note of other impact assessment (if available)**

A regulatory impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

### **Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation**

This instrument is necessary to ensure that derogations are extended to allow specific non-organic alternatives for pullets and Gellan gum if such organic substances or organically-reared livestock are not available on the market.

The current derogations have expired and this instrument is intended to remedy that situation.

As noted in previous advice on proposed regulations to fix deficiencies in the organics legislation (e.g. AG/034 The Organic (Amendment) Regulations 2021), the development of policy on organics has been aligned to date between Defra and the devolved administrations. There are economic and practical benefits to that continuing and the proposed regulations permit a regime on a GB wide basis to address that scenario.

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.

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.

**Intended laying date (if known) of instruments likely to arise**

Wednesday 23 March

**If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?**

The Scottish Parliament will have 28 days to scrutinise Scottish Minister's proposal to consent.

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

Defra have requested a response by 16 March 2022.

**Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?**

None

**Any significant financial implications?**

No.