24 January 2019

Edward Mountain MSP
Convener of Rural Economy and Connectivity Committee
Scottish Parliament
Edinburgh
EH99 1SP

THE ORGANIC PRODUCTS (AMENDMENT) (EU EXIT) REGULATIONS 2019

EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to the exercise of powers by UK Ministers under the European Union (Withdrawal) Act 2018 in relation to proposals within the legislative competence of the Scottish Parliament.

As you know, Mike Russell wrote to the Conveners of the Finance & Constitution and Delegated Powers and Legislative Reform Committees on 11 September setting out the Scottish Government’s views on EU withdrawal. That letter also said that we must respond to the UK Government’s preparations for a No-Deal scenario as best we can, despite the inevitable widespread damage and disruption that would cause. It is our unwelcome responsibility to ensure that devolved law continues to function on and after EU withdrawal.

I attach a notification which sets out the details of the SI which the UK Government proposes to make and the reasons why I am content that Scottish devolved matters are to be included in the SI. We have had sight of the final SI although it is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

In addition to the Organic Products (Amendment) (EU Exit) Regulations 2019, three further sets of amendments on organics are expected to be required to address deficiencies in domestic and directly applicable EU regulations. The Organic Products (Amendment) (EU Exit) Regulations 2018 relating to domestic organic legislation have already been notified to the Parliament and the Parliament provided its consent on 22 November. The Agriculture (Transfer of Functions) (EU Exit) (No.2) Regulations 2019, which are affirmative regulations

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

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which transfer a series of legislative functions from various policy areas including organics, were notified on 8 January. A further set of amendments relating to organic functions will be contained within a separate SI. A separate notification will be submitted to the Committee in due course for that instrument.

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

I look forward to hearing from you by 11 February 2019.

Yours sincerely,

FERGUS EWING
NOTIFICATION TO THE SCOTTISH PARLIAMENT

Name of the SI

The Organic Products (Amendment) (EU Exit) Regulations 2019 ("the proposed regulations") address minor and technical deficiencies arising from withdrawal from the European Union, based on a presumed "no deal" scenario. The proposed regulations do not affect the scope of powers exercisable by UK and Scottish Ministers and respect the devolution settlement. The name of the SI will be amended before it is laid because it duplicates an existing SI for which the making date was delayed from 2018 until 2019 (AG/08, mentioned below). The final name is not yet known.

Brief explanation of law that the proposals amend

The proposed regulations amend directly applicable European Union legislation, namely Council Regulation (EC) No 834/2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91; and Commission Regulation (EC) No 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control. In this notification the above instruments will be collectively referred to as the "organics EU legislation".

Summary of the proposals and how these correct deficiencies

This notification covers proposals to fix deficiencies in the organics EU legislation listed above.

Deficiencies in the organics EU legislation relate to references to, for example, "Member States", "Community" or "Commission" that will not be relevant when the UK leaves the EU. The proposed policy solution is to omit references that will no longer be appropriate and replace with, for example "appropriate authority", or "United Kingdom" where it is considered necessary. The changes are being made as the references would not make sense as a matter of domestic law post EU exit. Functions in the organics EU legislation afforded to Member States are transferred to the relevant Ministers or administration in the UK (the Scottish Ministers in relation to Scotland) who are defined as the “appropriate authority”.

The functions transferred by the proposed regulations are non-legislative functions. The legislative functions will be transferred in different UK statutory instruments. A notification for SI AG-TF/02 was submitted to the Scottish Parliament by the Cabinet Secretary for the Rural Economy on 8 January. AG-TF/02 contains transfers of legislative functions in Council Regulation (EC) No 834/2007. The amendments in the proposed regulations discussed in this notification should be read alongside the notification submitted to the Parliament on 8 January.

It is noted that the amendments in AG-TF/02 and the proposed regulations do not represent the full extent of the amendments being made to Council Regulation (EC) No 834/2007 and other related organics EU legislation (Commission
Regulation (EC) No 1235/2008). Further amendments to organics EU legislation are under consideration and will be included in a later SI. A separate notification will be submitted to the Scottish Parliament for that instrument in due course.

Additionally, it is noted that the amendments in the proposed regulations discussed in this notification should be read alongside the notification submitted to the Parliament on 9 November regarding the Organic Products (Amendment) (EU Exit) Regulations 2018 (sometimes referred to as AG/08) which amend the Organic Products Regulations 2009. The REC Committee confirmed its consent to AG/08 on 22 November.

The proposed regulations replace references to “Community law”, “Community provisions” and “Union rules” in the organics EU legislation with references to retained EU law or domestic law, where appropriate. References to “any Community language” are omitted. The list of terms referring to organic production is amended simply to include the term “organic” and terms in languages other than English are omitted from the list. References to “third country” are defined as any country or territory other than the United Kingdom, the Isle of Man, the Bailiwick of Guernsey or the Bailiwick of Jersey.

With regard to organic labelling, references to use of the EU organic production logo are removed and replaced, where appropriate, with requirements in relation to labelling in the United Kingdom and the use of UK logos post EU exit. Functions in respect of the logo will be transferred by one of the other UK statutory instruments (specifically AG-TF/02) and are discussed in further detail in the notification to the Scottish Parliament for that instrument. The Scottish Government is working closely with Defra and the other devolved administrations in respect of the development of future labelling requirements and the future logo.

References in the organics EU legislation to the existing EU electronic import control system – the Trade Control and Expert System (TRACES) - are replaced with references to the import control system operated in the United Kingdom.

Provisions with regard to the movement of organic products between Member States and the transmission of information to the Commission and Council are removed. Out of date references in the organics EU legislation to other EU instruments are also updated to refer to the latest relevant EU instruments or are omitted if they are redundant. For example, out of date references to Directives are updated or amended to refer to the domestic legislation implementing the Directive, as appropriate.

The proposal is to amend the legislation only to the extent necessary to enable it to work in the UK after EU exit. The proposed amendments are minor, technical amendments and do not contain substantive policy changes.

**Explanation of why the change is considered necessary**

Although many of the deficiencies are minor and/or technical in nature, there are sufficient deficiencies identified within the regulations regarding the production and labelling of organic products to raise concerns that the sale of organic products and the administration of the enforcement regime for organic products post EU exit would
be negatively impacted upon if the deficiencies were not corrected. The changes are necessary to ensure continuity of the administration and enforcement of the organics legislation, and to ensure that non-legislative functions continue to be exercised by the appropriate authority, post EU exit.

**Scottish Government categorisation of significance of proposals**

Category A. The proposed regulations are minor and technical in their detail, for example amending references to “Member States” and “Community” and ensuring that non-legislative functions in relation to labelling and control systems are transferred to the appropriate authority to ensure the legislation is operable post EU exit. The aim of the proposed regulations is to ensure continuity of law on exit day. There are no significant policy decisions for Ministers to make. The deficiencies do require to be corrected but there is an obvious policy answer in all cases, particularly given the “no deal” scenario. The proposed regulations update references and provisions which are no longer appropriate once the UK has left the EU.

**Impact on devolved areas**

While policy on organics is within devolved competence, the development of that policy has been aligned to date between Defra and the devolved administrations. There is economic and practical benefit to this continuing, particularly should the UK leave the EU without a deal in place. This SI allows for one organics regime on a UK wide basis to address that scenario but provides for Scottish Ministers to exercise non-legislative functions and take decisions in devolved areas should they wish to do so. The Scottish Government and UK Government have normally worked together to create a pan UK approach, rather than have Scotland subject to a mix of UK and Scottish instruments, and it is proposed that this approach continues, where it is in Scotland’s interests and in the interests of our organic sector. The proposed regulations amend the organics EU legislation which applies UK wide. The impact of the proposed regulations will apply consistently across the UK. This does not prevent a different approach being taken in the future should Scotland’s interests require it.

**Summary of stakeholder engagement/consultation**

Scottish Government policy officials will continue to engage with the Scottish Organic Forum to confirm that there are no significant concerns about the planned legislation. Scottish Government policy officials have already raised the matter with the Forum and they are content with our aim of ensuring, as far as possible, that the future organics regime operates as closely as possible to the current rules and understand that the proposed changes are appropriate in a “no deal” scenario. Additionally, Defra, in liaison with Scottish Government, are consulting with the UK Organic Certification Group (the overarching organisation for the organics control bodies).
Other impact assessments

No impact assessments have been carried out on the basis that the proposed regulations do not result in any policy changes and the UK Government does not intend to produce an impact assessment for the proposed regulations.

Summary of reasons for Scottish Ministers’ proposing to consent to UK Ministers legislation

The UK wide approach to the administration and enforcement of the organics legislation has worked well to date and since the aim is to ensure, as far as possible, continuity for the organics sector post EU exit, it makes sense to address the deficiencies that exist through UK SIs. Scotland does not have distinct issues that need handling separately from the rest of the UK and the majority of trade is within the UK. There could be risks of opting for SSIs, for example unintended inconsistencies in approach across the UK which could affect the industry.

Detail how Scottish Ministers’ have had regard to the guiding principles on animal welfare and the environment

The proposed changes are minor technical changes and adhere fully to the existing environmental and animal welfare principles.

Intended laying date of instrument

We understand that the SI will be laid on 11 February. The instrument will be laid in draft as the proposed regulations are subject to affirmative procedure.

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

The Scottish Parliament will have 19 days under the protocol ahead of the laying date to consider this notification, as the laying date has been brought forward by Defra. However, the Scottish Government is working with the UK Government on the basis that the protocol process agreed with the Scottish Parliament will be respected in relation to all EU Exit SIs.

Information about any time dependency associated with the proposal

Not applicable.

Significant financial implications

There are not expected to be significant financial implications associated with the proposed regulations.