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Edward Mountain MSP
Convener of Rural Economy and Connectivity
Committee
Scottish Parliament
Edinburgh
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10th December 2019

Dear Edward,

**OFFICIAL CONTROLS (ANIMALS, FEED AND FOOD, PLANT HEALTH FEES ETC.)
REGULATIONS 2019**

I am writing to you with regard to the implementation of Official Control Regulation (EU) No 2017/625 (OCR) as it applies to organics.

The OCR is part of the EU legislative package, Smarter Rules for Safer Food (SRSF), which also includes the Plant Health Regulation and Animal Health Regulation, and which has been the subject of previous submissions. EU official control rules are a key element of the governance of the agri-food chain in Europe. Official controls are currently governed by Regulation (EC) No 882/2004 but this will be replaced by new Official Control Regulation (EU) No 2017/625, which has an implementation date of 14 December 2019 for most of its provisions. The new Official Control Regulation (OCR) creates a single framework for all official controls and other official activities along the agri-food chain performed to ensure the correct application of food and feed law, rules on animal health and welfare, plant health and plant protection products. In particular, the new rules implement a risk-based approach, allowing the focus of resources on the most relevant issues. Subject areas within the scope of the OCR include plant health, animal health, food and food safety, feed and feed safety, pesticides, aquaculture, organics and GMOs.

The OCR will be directly applicable (i.e. automatically have effect as a matter of domestic law) in all EU Member States with effect from 14 December 2019 as regards most provisions. Although directly applicable, EU Member States will, with effect from that date, also be obliged as a matter of EU law to have in place supporting implementing domestic legislation, in particular in relation to enforcement of the new regime. In the UK, the domestic implementing legislation will take the form of regulations under section 2(2) of the European Communities Act 1972.

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Organics is a devolved policy area, however policy is aligned across the UK with the Secretary of State as competent authority for the whole of the UK. An existing system of official controls is in place, in line with the EU Organics Regulations and domestic regulations. Our view is that it would therefore be preferable for an SI to be made at UK level, in accordance with section 57(1) of the Scotland Act 1998. This provides that UK Ministers may use their powers to implement EU obligations (under section 2(2) of the European Communities Act 1972) in respect of Scotland, even if the subject matter is devolved. The UK Government only exercises this power with the agreement of the Scottish Government.

This proposed approach reflects the fact that policy on organics has been aligned to date between Defra and the devolved administrations. The UK Government, i.e. the Secretary of State, is the competent authority, hence the reason for handling the organics EU exit deficiencies exercise through the preparation of UK SIs. Section 57(1) can be used where policy is the same across the UK and in the case of organics, domestic implementation of EU provisions has always been done on a UK basis under this process, with Scottish Government agreement.

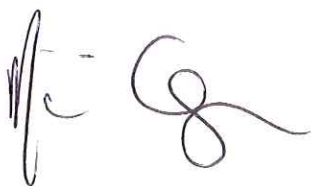
I have sought – and received – agreement from UK Ministers for a UK Statutory Instrument to implement the OCR for Scotland as regards organics. The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) Regulations 2019 have been prepared, to be made on 3 December and come into effect on 14 December. The SI includes provisions (which will apply to organics) relating to designations for the purposes of the OCR; audits and controls; assistance and co-operation; and enforcement and penalties. The SI will extend to the whole of the UK as regards organics. It will also extend to the whole of the UK as regards the reserved area of protected designations of origin, protected geographical indications and traditional specialities guaranteed. Otherwise, it will extend to England only.

The SI does not alter our responsibility for organics, it remains devolved, and does not restrict us in terms of how we manage our devolved responsibilities.

There has been engagement at a UK level with some control bodies that will be affected by the new Regulation and we will liaise with Scottish control bodies as appropriate. We are anticipating minimal impact given that there is already a UK-wide system of controls.

Separate arrangements are being made for implementation of the OCR as it applies to other devolved policy areas.

I am copying this letter to the Conveners of the Delegated Powers and Law Reform Committee and the Culture, Tourism, Europe and External Affairs Committee.



MAIRI GOUGEON

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