



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2020**

DATE **21 October 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

SI laid in Parliament, which amends secondary legislation in a devolved area

The Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2020

The 2020 Regulations, where necessary, makes technical corrections to retained direct EU law and previously made EU Exit Statutory Instruments (EU Exit SIs), under sections 8, 8B and 8C of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018. The matters addressed by the 2020 Regulations relate to the Common Organisation of Agricultural Markets (“CMO”), and is intended to ensure certain provisions within the CMO work effectively following IP completion day.

The CMO is the framework for the functioning and administration of the Common Organisation of Agricultural Markets and is part of pillar 1 of the Common Agriculture Policy (“CAP”). CMO was set up as a means of meeting the objectives of the CAP (Article 40 Treaty on the Functioning of the European Union), and in particular to stabilise markets, ensure a fair standard of living for agricultural producers and increase agricultural productivity. It has over time broadened out to provide a toolkit that enables the EU to manage market volatility, incentivise collaboration between and competitiveness of agricultural producers; and facilitate trade.

Within the CMO, the 2020 Regulations also address matters relating specifically to organic food. The organics sector has been strictly regulated in the UK and in other EU Member States by Council Regulation (EC) No 834/2007 and Commission Regulations (EC) Nos 889/2008 and 1235/2008. The regulations set out the requirements for organic production, processing, labelling and imports, and the inspection systems that must be in place to ensure the requirements are met. The regulations apply to organic food, feed and vegetative propagating material or seeds for cultivation.

This instrument amends retained EU legislation and a UK statutory instrument relating to Organic products within the Common Organisation of Markets (CMO) an area which Defra considers are of reserved competence. It should be read in conjunction with another proposed UK SI, which relates to the CMO, specifically Organic production in areas of devolved competence. The Organic Products (Production and Control) (Amendment) (EU Exit) Regulations 2020 were laid on the 15 October 2020.

The 2020 Regulations amend the following legislation

European legislation

- Regulation (EC) 1235/2008 laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries
- Regulation (EC) 1295/2008 on the importation of hops from third countries.
- Commission Delegated Regulation (EU) 2016/1237 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the rules for applying the system of import and export licences and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the rules on the release and forfeit of securities lodged for such licences.

Domestic legislation

- The Organic Production (Control of Imports) (Amendment) (EU Exit) Regulations 2019
- The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019;
- The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019,
- The Common Organisation of the Markets in Agricultural Products (Transitional Arrangements etc.) (Amendment) (EU Exit) Regulations 2019
- The Import and Export Licences (Amendment etc.) (EU Exit) Regulations 2019

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

Welsh Government officials are of the view that the 2020 Regulations contain provisions which are within the scope of the Senedd's legislative competence, and as such the related functions should not be solely conferred on the Secretary of State.

DEFRA take the view that amendments in the 2020 Regulations relate to reserved matters. On this basis, DEFRA intend to transfer various functions to the Secretary of State.

The purpose of the amendments

The retained EU Regulations relate to the Common Organisation of Agricultural Markets ("CMO"), domestic secondary legislation which implements EU legislation in respect of the CMO, and existing domestic secondary legislation which itself amends retained EU legislation relating to CMO, to enable it to work effectively following the implementation period completion day.

The amendments will correct the retained EU legislation in accordance with the European Union (Withdrawal) Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020), to ensure the implementation of the Northern Ireland Protocol and to remove ambiguities, inconsistencies and typographical mistakes so that the instruments are able to function as intended following the transition period.

The instrument makes provisions in respect of organic production. It will amend retained EU law relating to organic production and existing domestic secondary legislation which itself amends retained EU legislation relating to organics. The amendments will ensure alignment with the Northern Ireland Protocol and provide operability to existing provisions in retained Regulation (EC) No 1235/2008.

This instrument makes the appropriate corrections to retained EU law to ensure that CMO rules will operate effectively at the end of the transition period. These amendments include corrections to previous EU Exit SIs. The approach when amending retained EU law has been to ensure that legislation remains as close to the current system as possible; changes are largely technical in nature.

This instrument makes a number of changes, for example:

- the correction of redundant references such as 'the Union' and 'the Commission' by substituting these with the term 'Great Britain', and to correct ambiguities and inconsistencies to align the implementation of the Northern Ireland Protocol. These amendments intend to provide clarity to stakeholders on the requirements for goods placed on the market in GB and moving to NI following IP completion day;

- amendments to domestic secondary legislation and retained EU legislation, which was previously drafted for the UK as a whole rather than just Great Britain, to omit references relating to Northern Ireland, where applicable, so it can remain aligned with the EU;
- the removal of out of date references to ‘exit day’ and the correction of transitional provisions to reference ‘IP completion day’, so these provisions remain coherent and continue to function as intended following the implementation period;
- to ensure alignment with the UK Government’s Border Operating Model, amendments will be made to the transitional provisions concerning the import of hops and hops products. The transitional arrangements concerning notification requirements for imports of beef and veal from third countries will be omitted because the UK government considers they are no longer required;
- operability fixes to ensure the continuation of the import and trade in organic food, feed and vegetative propagating material or seeds for cultivation;
- the correction of ambiguities, inconsistencies and typographical mistakes so that the instruments are able to function as intended following IP completion day.

The 2020 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here:

<https://www.legislation.gov.uk/ukdsi/2020/9780348213317>

Response to UK Government

The Welsh Government’s position is that agriculture and the CAP are devolved and do not relate to the reserved matters under any heading in Schedule 7A to the Government of Wales Act 2006. However, the UK Government does not agree, and believes the subject matter of the 2020 Regulations is reserved. Therefore, the UK Government has not requested Welsh Ministerial consent.

The Welsh Government’s view is that the above functions directly relate to the objectives of the CMO to improve the productivity of the agricultural sector and so raise the competitiveness of primary produce in the market place. The subject matter of agriculture and CAP is within the legislative competence of the Senedd (i.e. devolved). Under the terms of the Intergovernmental Agreement, the consent of Welsh Ministers should have been sought prior to laying the 2020 Regulations.

The Welsh Ministers have written to the UK Government to inform them of our view that it is not appropriate for UK Government Ministers to take unilateral decisions on matters which have a direct effect upon areas of devolved competence and Welsh Ministers do not plan to grant unilateral consent for this Statutory Instrument.