

Lesley Griffiths AS/MS
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd



Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff
CF99 1SN

huw.Irranca-Davies@senedd.wales

25 November 2022

Dear Huw,

I am writing to inform you of my consent for a Statutory Instrument which the UK Government intends to make on 6 December, which is within the competence of Welsh Ministers. This consent was requested on 24 October.

The Organic Production (Amendment) Regulations (No. 2) 2022 will be laid on 6 December, and will extend derogations for the use of non-organic pullets subsequently raised for organic egg production and for 5% of feed for pigs and poultry being non-organic to provide necessary protein. The proposed SI will also delay the restriction on the use of gellan gum in production of processed organic food, yeast and yeast products. The provisions are necessary due to the expiration of previous derogations for these products. No new organic sources of these products have become available.

This SI has been developed through the Organics Four Nations Working Group, following requests from the UK organic Control Bodies to the UK Government.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

My consent for this SI is based on the Secretary of State using powers conferred by Articles 22(1 and 2) and 38b(8) of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products. Article 22(1) allows the Appropriate Authority to grant exceptions to organic production rules, provided they are for one of the reasons set out in Article 22(2). The reason for the exception in this case is provided for in Article 22(2)(b), “where it is necessary in order to ensure access to feed, seed and vegetative propagating material, live animals and other farm inputs, where such inputs are not available on the market in organic form”. Article 38a(3)(a) of this regulation states the appropriate authority can be the Secretary of State in relation to Wales, provided the consent of the Welsh Ministers is given. Consent for these regulations is limited to the period of their implementation. Article 38(b) paragraph 8 provides powers for consequential, incidental, supplementary, transitional or saving provision (including provision amending, repealing or revoking enactments) and to make different provision for different purposes. These derogations are implemented by REUL 889/2008. The derogations in this SI expire on 31 December 2025 for pullets and protein feed and delays the restrictions for gellan gum until 1 January 2026.

The derogations were first introduced when organic regulations had their last major overhaul with Council Regulation (EC) No. 834/2007 on organic production being implemented in 2008. While these derogations have to be time-limited, they have been extended consistently since this date because alternative products have not been available. Because these derogations have been in place since 2008, businesses have had no reason to invest in raising organic pullets, or producing organic gellan gum and pig & poultry feed. Therefore, these regulations are needed to maintain organic production and avoid disruption for businesses which rely on these products.

The European Commission has now replaced Regulation (EC) No. 834/2007 with Regulation (EU) 2018/848, but this only came into force after the UK left the EU, which is why REUL 834/2007 still applies in Wales. One of the policy aims of REUL 2018/848 has been to end the need for derogations and make organic farming wholly organic. The Expert Group on Organic Production is being established by the Four Nations to advise on the development of new organic regulations to replace 834/2007 and the role of derogations will form part of this review. This substantive update to organic policy will be made in Welsh legislation.

There are particular issues if the derogation for pig & poultry feed is not extended. There is a risk there will be no organic protein feed to replace the 5% non-organic feed allowed. Without this non-organic protein feed there is a risk of minor animal welfare issues for organic laying hens as these hens would not receive the correct nutrients they need.

Because of their minor and technical nature, it has been more expedient to make these regulations across Great Britain, rather than through a Welsh SI. Organic stakeholders have often pressed their desire for consistent regulation across Great Britain when it comes to organic standards, because of cross-border supply chains. It is in the interest of Wales to ensure these regulations be consistent and come into force at the same time across Great Britain.

If Wales were to use a Wales-only SI to extend these derogations, it may not be possible to have them in place before the current derogation expires. This would mean producers in Wales would not be able to comply with organics regulations for a time as the derogations would not be in place. As DEFRA acts as the competent authority for organic production on behalf of Welsh Ministers, they would then have to oversee the implementation of two differing standards for a time, one set in Wales and one for the rest of Great Britain.

Through the Four Nations Working Group, Welsh Government officials are able to closely monitor any proposed Great Britain-wide organics regulations and whether or not they are being made in Wales' interests. Officials from the Welsh Government will continue to attend both the Four Nations Working Group and the UK Organic Certifiers Group to monitor the implementation of this SI.

For these reasons, it is my view consent is consistent with the approach for consent for devolved provisions in UK legislation, as set out in the Counsel General's letter to the chair of the Legislation, Justice and Constitution Committee of 22 October last year.

Regards,

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

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