

## **ANNEX A**

### **SI CMO/002 THE COMMON ORGANISATION OF THE MARKETS IN AGRICULTURAL PRODUCTS (MARKETING STANDARDS AND ORGANIC PRODUCTS) (TRANSITIONAL PROVISIONS) (AMENDMENT) REGULATIONS 2021 (the “SI”)**

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

Type 1

#### **2. Name of the instrument**

The SI is the [Common Organisation of the Markets in Agricultural Products \(Marketing Standards and Organic Products\) \(Transitional Provisions\) \(Amendment\) Regulations 2021](#)(SI 2021/1396).

#### **3. Summary of the SI**

The UK Government laid the SI before Parliament on 9 December 2021. The SI amends relevant retained EU law and domestic legislation to extend grace periods concerning import requirements for organics and marketing standards for hops, poultrymeat and fruit and vegetables.

The Scottish Parliament has already considered the underlying policy regarding extension of grace periods in the Common Organisation of the Markets in Agricultural Products (Transitional Arrangements) (Amendment) Regulations 2021 (SI 2021/652) (also referred to as the “AG/042 Regulations”), which was notified and considered by the Scottish Parliament previously. The SI largely replicates the prior extension of grace periods in SI 2021/652, with the exception of wine and the addition of poultrymeat. Wine is excluded in the SI as bespoke provisions in relation to wine are contained in the draft Wine (Amendment) Regulations 2021, which have been considered by the Parliament in a notification regarding these regulations. Poultrymeat is included in the SI as the current grace period ends on 1 January 2022 and therefore now requires to be extended by the SI, but was not required to be amended previously by SI 2021/652.

The UK Government’s position is that the SI relates to reserved matters and they are therefore not requesting Scottish Ministers consent to the making of the SI. The UK Government adopted the same position on SI 2021/652. The Scottish Government’s position is that those amendments relating to organics, hops, poultrymeat and fruit and vegetables relate to devolved matters. Scottish Government officials have written to colleagues within the UK Government’s Department for the Environment, Food and Rural Affairs (Defra) to seek clarification on why consent was not sought. However, although consent has not been sought in this instance, the effect of the SI is consistent with Scottish Government policy.

#### **4. Explanation of law that the SI amends**

The legislation amended by the SI is:

- Retained EU law - Council Regulation (EC) No 834/2007 on organic production and labelling of organic products (EUR 2007/834);
- Retained EU law - Commission Regulation (EC) No 543/2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat (EUR 2008/543);
- Retained EU law - Commission Regulation (EC) No 1235/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries (EUR 2008/1235);
- Retained EU law - Commission Regulation (EC) No 1295/2008 on the importation of hops from third countries (EUR 2008/1295);
- Retained EU law - Commission Implementing Regulation (EU) No 543/2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors (EUR 2011/543);
- Retained EU law - Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products (EUR 2013/1308);
- The Hops Certification Regulations 1979, in respect of Great Britain (SI 1979/1095).

#### **5. Summary of the SI**

The SI makes technical amendments to retained European Union (EU) and domestic legislation to extend 'grace periods' concerning import requirements that apply to certain marketing standards sectors (i.e. hops and hop products, poultrymeat, and fruit and vegetables) exported by the EU to Great Britain (GB), as well as to those that apply to hops and fruit and vegetables exported by approved third countries into GB. The SI will also extend the 'grace periods' applying to import requirements for organic products exported by the EU, European Economic Area states and Switzerland to GB.

The SI will bring the introduction of marketing standards and organic import requirements in line with the newly revised timetable for sanitary and phytosanitary (SPS) border controls, which will be introduced on 1 July 2022.

The 'grace periods' were originally set out by transitional provisions in legislation, which were inserted into the legislation by EU Exit SIs. This was done to allow businesses additional time to prepare for the introduction of the relevant certification and inspection requirements following the UK's withdrawal from the EU.

These 'grace periods' were previously extended by SI 2021/652 to align with the revised timetable for the introduction of SPS border controls. The 'grace periods' in respect of imports of organic products, poultrymeat and hops come to an end on 1 January 2022, while the grace period in respect of imports of fruit and vegetables comes to an end on 1 March 2022.

Previous advice has been provided on the following disputed SIs in relation to the following products (i.e. SIs which the UK Government have laid, without seeking the consent of the Scottish Ministers, because the UK Government's position is that the SIs relate to reserved matters, whereas the Scottish Government's position is that some or all of the amendments are to provisions that relate to devolved matters):

### **Organics:**

- AG/15 (now SI 2019/692 – The Organic Production (Control of Imports) (Amendment) (EU Exit) Regulations 2019)
- FD/07 (now SI 2020/1661 – The Agricultural Products, Food & Drink (Amendment) (EU Exit) Regulations 2020)

In addition to those referenced above, this advice should be considered alongside the following previously notified SIs containing organics provisions, which have been formally consented to by the Scottish Parliament –

- The Agriculture (Legislative Functions) (EU Exit) (No. 2) Regulations 2019 (AG-TF/02)
- The Organic Products (Amendment) (EU Exit) Regulations 2019 (AG/08)
- The Organic Production and Control (Amendment) (EU Exit) Regulations 2019 (AG/02)
- The Organic Products (Production and Control) (Amendment) (EU Exit) Regulations 2020 (AG/25)

### **Hops, wine and fruit and vegetables:**

- CAP/07 (now SI 2019/828 – The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments)(EU Exit) Regulations 2019)
- CMO/17 (now SI 2020/1452 – The Common Organisation of the Markets in Agricultural Products (Miscellaneous Amendments) (EU Exit) Regulations 2020)
- FD/07 (now SI 2020/1661 – The Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2020)

### **Amendments to the Hops Certification Regulations 1979**

- The amendments to the Hops Certification Regulations 1979 are to provisions made in SIs to which the Scottish Ministers' consent was sought (CMO/06 and CMO/18 – now SIs 2019/824 and 2020/1453).

## **6. Why are these changes necessary?**

Since the laying of SI 2021/652, the UK Government has announced a further deferral of SPS requirements for imports, to give businesses more time to recover from the impact of the Covid-19 pandemic. The introduction of controls will now occur on 1 July 2022,

The SI will amend the existing dates when marketing standards and organics import requirements are introduced, in order to align these with the revised timetable for SPS border controls.

## **7. Impact on devolved areas**

The Scottish Government has been able to reach agreement with the UK Government on legislative or administrative competence in many areas, however there are some areas of policy where this has not been possible. The SI includes such provisions.

The area of contention is the provisions on organics, hops, poultrymeat and fruit and vegetable legislation described above. The effect of these amendments is consistent with Scottish Government policy, however the Scottish Government's position is that these amendments relate to devolved matters.

These areas of dispute have already been highlighted previously to the Scottish Parliament through the non-notifications listed above, in particular the AG/042 Regulations.

The SI does not contain any transfers of functions.

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

An Organics Framework Outline Agreement 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.

An Agriculture Support Framework is in the advanced stages of development. The scope of the framework covers working arrangements between the four administrations on future agricultural support now that the UK has left the EU and the Common Agricultural Policy (CAP). Specific elements of agricultural support covered in this framework are:

- Agricultural spending and associated regulation and enforcement;
- Marketing standards;
- Crisis measures, Public Intervention (PI) and Private Storage Aid (PSA);
- Cross border holdings (within the UK);
- Data collection and sharing

## **9. Stakeholder engagement/consultation**

The UK Government has engaged with industry representatives to familiarise them with the proposed changes to import requirements made under the SI.

## **10. Any other impact assessments?**

No other impact assessments have been carried out and the UK Government do not intend to produce an impact assessment for the SI.

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

Scottish Parliamentary consent has not been sought by the UK Government for the laying of the SI as it is the position of the UK Government that these provisions are reserved.

Scottish Ministers consider that the SI includes devolved provisions. Scottish Government officials have written to colleagues within Defra to seek acknowledgement from Defra that the SI contains devolved provisions.

## **12. Intended UK laying date**

The SI was laid before Parliament on 9 December 2021, subject to the negative resolution procedure, and will come into force on 1 January 2022.

## **13. Information about any time dependency associated with the proposal**

There is no time dependency associated with the SI.

## **14. Any significant financial implications?**

There are no financial implications associated with the SI.