NOTIFICATION TO THE SCOTTISH PARLIAMENT

Name of the SI

The Organic Products (Amendment) (EU Exit) Regulations 2018 (“the proposed regulations”) address minor and technical deficiencies arising from withdrawal from the European Union, based on a presumed “no deal” scenario. The regulations do not affect the scope of powers exercisable by UK and Scottish Ministers and respect the devolution settlement.

Brief explanation of law that the proposals amend


Summary of the proposals and how these correct deficiencies

This notification covers proposals to fix deficiencies in the Organic Products Regulations 2009. Deficiencies in the Organic Products Regulations 2009 relate to references to, for example, the “European Union” or “EU” that will not be relevant when the UK leaves the EU. References to the requirement to use the EU organic logo will also not be relevant to the enforcement provisions. The proposed policy solution is to omit references that will no longer be appropriate and replace with, for example “United Kingdom” where it is considered appropriate.

Additionally, it is proposed that representatives of the European Commission will no longer be able to accompany authorised officers when those officers are exercising their powers of entry, as that is not appropriate after exit and accordingly it is proposed that the provision for that is omitted. References in the schedule of the 2009 Regulations to the requirement to use the EU logo are also proposed to be removed.

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, the administration of the enforcement regime for organic products, and the trade of 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 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 “EU” and “European Union”. 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 SI updates references 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 on organics has been aligned to date between Defra and the devolved administrations. There is economic and practical benefit to continue, particularly should we leave the EU without a deal in place. This SI allows for one organics regime on a UK wide basis to address that scenario. The Scottish Government and UK Government have normally worked together to create a pan UK approach and it is proposed that this approach continues, where it is in Scotland’s interests and in the interests of our organic sector for that to continue. The proposed regulations amend domestic legislation, i.e. the Organic Products Regulations 2009 which apply UK wide. The Organic Products Regulations 2009 were made on a UK wide basis following deliberate policy decisions at the time those Regulations were made. The impact of the proposed regulations will apply consistently across the UK and is not specific to Scotland. 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 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 other impact assessments have been carried out and the UK Government do 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**

20 November 2018

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

Not applicable. Scottish Government are working with Defra on the basis that no EU Exit SIs will proceed to be made (for negative procedure SIs), or laid in draft (for affirmative SIs), until after they have been through the consent process agreed with the Scottish Parliament.

**Information about any time dependency associated with the proposal**

Not applicable.

**Significant financial implications**

There may be some financial implications for industry and businesses of the “no deal” arrangements in relation to changes to packaging and labelling, although we are working with Defra to minimise these costs through transitional arrangements. Costs are as yet unknown. There are not, however, significant financial implications attached to this SI.