

European Scrutiny Committee

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From: Sir William Cash MP

4 June 2020

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Commission Delegated Regulation of 13 January 2020 amending Annex II to Regulation (EU) 2018/848 as regards certain detailed production rules for organic products (Council document 5227/20) (41039)

We have considered your letter of 9 April on the above document.

We agree that there is good reason to believe that a UK-EU equivalence framework for organic products is feasible, not least because EU law provides for such frameworks between the EU and third countries, and we note indeed that you have published your proposed text.

We remain interested, however, in the further detail. On the one hand, you acknowledged that the new EU legal base for any such arrangement would be Regulation (EU) 2018/848 but, on the other, you consistently referred to precedent concluded under the old legal base. You also did not mention that existing arrangements concluded under the old legal base — where the terms of equivalence are less rigorous — are time-limited until 2025 at the latest.

As far as we can see, a UK-EU equivalence arrangement would need to be concluded under Article 47 of Regulation (EU) 2018/848, which reads:

“A recognised third country [...] is a third country which the Union has recognised under a trade agreement as having a system of production meeting the same objectives and principles by applying rules which ensure the same level of assurance of conformity as those of the Union.”

We understand your point that “equivalence” and “compliance” are distinct, but we would nevertheless welcome clarity on how, in practical terms, GB might diverge from EU rules while securing equivalence under the terms of Regulation (EU) 2018/848 as set out above. We note the Government’s proposal that EU retained law in the UK (Regulation (EC) 834/2007) be considered as equivalent to Regulation (EU) 2018/848, but UK legislation would clearly need to be amended to reflect the terms of Regulation (EU) 2018/848 (rather than its predecessor) in order to be equivalent. The whole rationale for the new Regulation — which the UK ultimately supported as an EU Member State despite initial concerns — was to address weaknesses in the current legislative framework. To take two examples, the new Regulation strengthens the control system and it adds production rules in a number of sectors, including poultry.

Indeed, the Government’s Delegated Powers Memorandum on the Agriculture Bill explains the need for Ministers to have the powers “to establish regulatory equivalence with the EU and other trading partners” because otherwise the UK would be “operating to standards different from those of one of our major trading partners” from 1 January 2021.

It appears, therefore, that there will be a need for a degree of convergence at least — but not necessarily harmonisation or “compliance” — in order to achieve equivalence with the new EU Regulation. We would welcome your comments on our assessment and what the process and timetable is for making these decisions on what regulatory changes are required in order to secure equivalence, including how the respective powers of the devolved administrations are being factored in. Will separate equivalence decisions be required for each nation of GB?

We assume that agreement to a mutually beneficial equivalence arrangement would also assist trade in organic products between GB and Northern Ireland, given Northern Ireland’s obligations under the Protocol. You noted in your letter that “internal assessments” were underway on how the NI Protocol will impact Northern Ireland’s producers and processors of organic products. This seems like an important and urgent piece of work. We would welcome an update and information as to by when the assessments are likely to be completed and who is taking ownership of them. Is it the responsibility of the UK Government or of the Northern Ireland Executive?

We believe that this is a helpful case study of what it means to be able to “tailor the UK’s rules to the domestic requirements of UK operators”, while continuing to trade with the EU and other trading partners, respecting the UK’s

international obligations under the Withdrawal Agreement's Northern Ireland Protocol and respecting the powers of the devolved nations.

We look forward to your response within ten working days.

We are copying this letter to Neil Parish MP, Chair of the Environment, Food and Rural Affairs Committee and Ian Bradshaw, Clerk of the Environment, Food and Rural Affairs Committee; Rt Hon. Hilary Benn MP, Chair of the Committee on the Future Relationship with the EU and Gordon Clarke, Clerk of Committee on the Future Relationship with the EU; Simon Hoare MP, Chair of the Northern Ireland Affairs Committee and Nicholas Beech, Clerk of the Northern Ireland Affairs Committee; the Earl of Kinnoull, Chair of the EU Select Committee in the House of Lords and Christopher Johnson, Clerk of the Lords EU Select Committee; your Departmental EU Scrutiny team; and Les Saunders and Donald Harris in the Cabinet Office.

CHAIR