

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND NORTHERN IRELAND PROTOCOL

11940/22 + ADD 1

C(2022) 4755 FINAL + ANNEXES 1-3

COMMISSION DELEGATED REGULATION (EU) .../... OF 29.7.2022 SUPPLEMENTING REGULATION (EU) NO 1308/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS MARKETING STANDARDS FOR OLIVE OIL, AND REPEALING COMMISSION REGULATION (EEC) NO 2568/91 AND COMMISSION IMPLEMENTING REGULATION (EU) NO 29/2012

Submitted by the Department for Environment, Food and Rural Affairs

11 November 2022

SUBJECT MATTER

1. The European Commission have formally adopted two regulations in relation to Olive Oil marketing standards [Commission Delegated Regulation draft reference C(2022) 4755 and Commission Implementing Regulation draft reference C(2022) 4800¹]. The regulations will repeal two existing regulations (Commission Regulation 2568/91, and Commission Implementing Regulation 29/2012) and re-enact these with some changes. The changes largely relate to simplification (eg reducing the number of very detailed Annexes setting out analytical methods to be applied to samples), or to increase clarity and transparency.
2. The Olive Oil marketing standards protect consumers and businesses from misdescribed and adulterated olive oil products. The standards ensure olive oil is marketed fairly, facilitating trade, and provide a deterrent against fraud.
 - a. The marketing standards set out parameters for different categories (e.g. extra virgin olive oil, virgin olive oil, olive oil composed of refined olive oils and virgin olive oils, olive pomace oil); methods of analyses (chemical and organoleptic [ie relating to taste and/or smell]) and other control provisions; and labelling and packaging rules.
 - b. In the UK, there are no certification or border checks for olive oil marketing standards. Bottlers and retailers are inspected on a risk basis by Animal & Plant Health Agency (APHA) who test for compliance.

¹ C(2022)4800: Commission Implementing Regulation (EU) 2022/2105 of 29 July 2022 laying down rules on conformity checks of marketing standards for olive oil and methods of analysis of the characteristics of olive oil [https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2022\)4800&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)4800&lang=en)

Commission Delegated Regulation draft reference C(2022) 4755

3. Commission Delegated Regulation C(2022) 4755 and an additional document containing Annexes I to III were formally adopted by the EU Commission on 29 July 2022. This regulation will repeal existing regulations 2568/91 and 29/2012 relating to olive oil marketing standards and, together with Commission Implementing Regulation draft reference C(2022) 4800, replaces them with a Commission Delegated Regulation and a Commission Implementing Regulation.
4. The delegated act simplifies and clarifies rules which relate to characteristics of different olive oils categories; blending, naming, labelling, packaging and storing of olive oils sold at retail level; as well as special provisions related to the place of origin and optional reserved terms, to underline specific characteristics of some olive oils.
5. The majority of provisions referred to in C(2022) 4755 correlate to provisions in the two repealed pieces of legislation, however a new provision also exists regarding greater control over the use of legal names of olive oil when food stuffs are added to olive oil with certain characteristics.

Commission Implementing Regulation draft reference C(2022) 4800

6. Commission Implementing Regulation C(2022) 4800 and an additional document containing Annexes I to V were also formally adopted by the EU Commission on 29 July 2022.
7. The implementing act now relates the analytical methods to be applied to samples of olive oil directly to the relevant International Olive Council (IOC) documents, rather than, as previously, being transcribed into EU law.

SCRUTINY HISTORY

8. The Parliamentary scrutiny history relevant to this Explanatory Memorandum is contained in Annex A. There is no previous scrutiny history for Commission Delegated Regulation draft reference C(2022) 4755 and Commission Implementing Regulation draft reference C(2022) 4800. However, these Regulations supplement and implement their parent EU act. Therefore, the scrutiny history of that parent Regulation is given in the Annex.

MINISTERIAL RESPONSIBILITY

9. Responsibility lies with the Secretary of State for Environment, Food and Rural Affairs.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

10. Agriculture is a devolved policy area under the Devolution Settlements for Scotland, Wales and Northern Ireland. As an area of agriculture, olive oil marketing standards are a devolved policy matter and subject to the agricultural support common framework.
11. Marketing standards, including olive oil, are contained within the Northern Ireland Protocol under Heading 31 ("Food - ingredients, traces, residues, marketing standards") of Annex II.
12. Devolved administrations have been consulted in the preparation of this EM. No concerns have been raised by Wales and Scotland. Northern Ireland has provided comment and is of the opinion that the coming into force of the two recently adopted Commission Regulations will not lead to any effective divergence between GB and EU (here, including NI) olive oil marketing standards.

LEGAL AND PROCEDURAL ISSUES

13.

i. Legal Base

Commission Delegated Regulation draft reference C(2022) 4755 states its legal base as: Articles 75(2); 78(3) and 88(3) of EU Regulation 1308/2013.

Commission Implementing Regulation draft reference C(2022) 4800 states its legal base as: Article 90a(6) points (b) and (c), and Article 91 points (b), (d) and (g), of EU Regulation 1308/2013.

ii. Voting Procedure

The UK has not been and will not be involved in a voting procedure. This is a delegated regulation that was made by the European Union.

iii. Timetable for adoption and implementation

The Northern Ireland Protocol provides that limited areas of EU law will continue to apply to and in the UK in respect of Northern Ireland. Commission Delegated Regulation draft reference C(2022) 4755 and Commission Implementing Regulation draft reference C(2022) 4800 were formally adopted by the EU Commission on 29 July 2022.

Both documents state that they will only come into force on the twentieth day after the day they have been published in the EU Official Journal (OJ). Both the texts of the Commission Regulations were published in OJ volume 65 on 4 November 2022 under Commission Delegated Regulation (EU) 2022/2104 and Commission Implementing Regulation (EU) 2022/2015.

Therefore, they will come into force on 24 November 2022. As a result, Commission Regulations 2568/91 and 29/2012 will only be repealed and replaced on that date. Therefore, by definition, there cannot be any divergence between GB and NI until 24 November 2022. However, as of 24 November 2022, there will be some slight divergence between GB and NI as noted in paragraph 20.

POLICY IMPLICATIONS

14. In GB, retained EU regulations (29/2012 Marketing Standards for Olive Oil and 2568/91 Characteristics of Olive Oil and Olive Residue Oil and the Relevant Methods of Analysis) continue to set out olive oil marketing standards.

15. The retained olive oil marketing standards continue to meet current policy objectives and continue to protect consumers and businesses from misdescribed and adulterated olive oils. However, the Department will be reviewing EU retained law in this area as part of its programme of work under the Retained EU Law (Revocation and Reform) Bill, once enacted, to identify opportunities to reduce burdens on business and improve growth. As part of that exercise, we will consider the work the EU has done to amend its own legislation, but the determining factor in our decisions will be whether any changes improve the regulatory environment for our own businesses and citizens. Part of that decision making will include consideration of the impacts of any regulatory divergence and continued work with Devolved Administrations.

16. Under the Northern Ireland Protocol, EU olive oil marketing standards continue to apply directly in NI. The formally adopted regulations relate to the EU standards that apply in Northern Ireland and the EU.

17. The implications of Commission Delegated Regulation draft reference C(2022) 4755 and Commission Implementing Regulation draft reference C(2022) 4800 for the UK as a third country are limited.

Commission Delegated Regulation C(2022) 4755

18. In regards to Commission Delegated Regulation C(2022) 4755, Northern Ireland will continue to follow EU marketing standards rules for olive oil and the document will not alter the relationship with the Northern Ireland Protocol.

19. This legislation will not introduce any barriers to the movement of goods between GB and NI.

20. The legislation introduces some slight divergence between GB and NI marketing standards. For example, marketing standards in NI will exert tighter control over the use of names of certain types of olive oil when such oil is incorporated in a foodstuff.
21. Furthermore, the repeal of 2568/91 and 29/2012 will create a temporary enforcement issue in Northern Ireland. Obligations to conform to marketing standards will still apply in Northern Ireland but the powers of entry to inspect and take samples through the Olive Oil Marketing Standards Regulations 2014 will be affected. This is because the 2014 Regulations, as they apply to NI, will continue to refer to the (then-) repealed Regulations 2568/91 and 29/2012. However, the enforcement issue will only apply when the two recently-adopted Commission Regulations actually come into force as discussed in the Legal and Procedural issues section. The 2014 Regulations (i.e. The Olive Oil (Marketing Standards) Regulations 2014 [SI 2014/195]) will need to be amended as they apply to NI, so that they refer to the two new Commission Regulations.

Commission Implementing Regulation C(2022) 4800

22. In regards to Commission Implementing Regulation C(2022) 4800, Northern Ireland will continue to follow EU marketing standards rules for olive oil and the document will not alter the relationship with the Northern Ireland Protocol. This legislation will not introduce any barriers to the movement of goods between GB and NI.
23. We recognise the impact the Northern Ireland Protocol is having on the ground. The UK Government has been clear for some time that the Protocol has been causing serious problems. We are continuing to work with the EU to find a solution to sort out these very real issues for the people of Northern Ireland. It is perfectly possible for the United Kingdom and EU to work out a solution which delivers for the people of Northern Ireland.

CONSULTATION

24. The Government has not undertaken any consultation of external stakeholders, nor have any impact assessments been carried out since the changes are minor. However, when developing policy on future alignment with international marketing standards we will carry out a full consultation with interested parties, including traders, importers and exporters, and consumers.

FINANCIAL IMPLICATIONS

25. There are no financial implications for the UK arising from this proposal.

M. Spencer

**THE RT. HON. MARK SPENCER M.P.
MINISTER OF STATE (MINISTER FOR FOOD)
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**

PARLIAMENTARY SCRUTINY HISTORY RELEVANT TO A:

COMMISSION DELEGATED REGULATION (EU) .../... OF 29.7.2022 SUPPLEMENTING REGULATION (EU) NO 1308/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS MARKETING STANDARDS FOR OLIVE OIL, AND REPEALING COMMISSION REGULATION (EEC) NO 2568/91 AND COMMISSION IMPLEMENTING REGULATION (EU) NO 29/2012 (AND ADD 1).

EM 15397/11, COM(11)626: REGULATION 1308/2013 (THE SINGLE CMO REGULATION)

DATE EM SIGNED: 29/10/2011

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
EUROPEAN SCRUTINY COMMITTEE REPORTED ON THE PROPOSAL ON 5 OCCASIONS AS RAISING ISSUES OF POLITICAL IMPORTANCE (FINAL REPORT 32, 12/13). THE PROPOSAL WAS DEBATED IN EUROPEAN COMMITTEE A ON 18/6/13	THE PROPOSAL WAS EXAMINED BY THE THEN HOUSE OF LORDS EUROPEAN UNION COMMITTEE'S SUB-COMMITTEE D AND COMPLETED SCRUTINY ON 22/05/13