

NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Official Controls (Extension of Transitional Periods) (Amendment) Regulations 2022

Is the notification Type 1 or Type 2

Type 1.

A brief overview of the SI (including reserved provision)

The purpose of the Official Controls (Extension of Transitional Periods) (Amendment) Regulations 2022 (“the Instrument”) is to protect biosecurity and support trade by ensuring that within Great Britain, and between Great Britain and ‘relevant third countries’ as defined in Annex 6 to Regulation (EU) 2017/625 (“the Official Controls Regulation”), effective official border controls continue to operate following the end of the Transition Period.

The changes made by the Instrument relate to controls on imports to Great Britain for the set of commodities known collectively as Sanitary/Phytosanitary measures (SPS) goods.

The Instrument replaces the date for the ending of the transitional staging period (TSP), as set out in the Official Controls (Extension of Transitional Periods) Regulations 2021¹ during which the Official Controls Regulation setting controls on SPS imports into Great Britain applies in a modified manner in relation to imports into Great Britain from relevant third countries (in particular EU member States). At the end of the TSP the Official Controls Regulation will apply fully to all SPS goods, including those imported into GB from relevant third countries. The current end date for the TSP is 30 June 2022. The Instrument will change this date to 31 December 2022. The Instrument also makes some other changes to provision which applies during the TSP (further details below).

In addition to changing the date of the TSP, the instrument makes consequential changes to the Meat Preparations (Amendment and Transitory Modification) (England) (EU Exit) Regulations 2020² which apply in England only and do not extend to Scotland.

Details of the provisions that Scottish Ministers are being asked to consent to.

As noted above, the Instrument replaces the date for the ending of the transitional staging period (TSP), as set out in the Official Controls (Extension of Transitional Periods) Regulations 2021 during which the Official Controls Regulation applies in a modified manner in relation to imports into Great Britain from relevant third countries (in particular EU member States). At the end of the TSP the Official

¹ S.I. 2021/809

² S.I. 2020/1666

Controls Regulation will apply fully to all SPS goods, including those imported into GB from relevant third countries. The current end date for the TSP is 30 June 2022. The Instrument will change this date to 31 December 2022. The Instrument also makes some other changes to provision which applies during the TSP (further details below).

The amendments made by the Instrument do not confer any powers to make legislation on UK or Scottish Ministers.

Summary of the proposals

The EU (Withdrawal) Act 2018 (EUWA) converted and preserved EU law at the end of the Transition Period into domestic law (retained EU law). It also provided for amendments to be made to address deficiencies arising from EU exit.

Those amendments included the introduction of a 'transitional staging period' for goods entering Great Britain from the EU and certain other countries ('relevant third countries'). Provision was made for the end dates of those transitional periods to be changed by statutory instrument, and this instrument is made in exercise of those powers, namely Article 144(6) of, and paragraph 2 of Annex 6 to, the Official Controls Regulation.

Statutory instruments made and brought into force in late 2020 gave effect to the UK Government's decision to introduce checks on EU SPS imports in phases, following the end of the Transition Period on 31 December 2020. Previous TSP amendments, including to extend TSP end dates, have been made by: the Trade and Official Controls (Transitional Arrangements for Prior Notifications) (Amendment) Regulations 2021³, the Official Controls (Extension of Transitional Periods) Regulations 2021⁴, the Official Controls (Extension of Transitional Periods) (England and Wales) (Amendment) Regulations 2021⁵, the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2021⁶, the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No. 2) Regulations 2021⁷, the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No. 3) Regulations 2021⁸ and the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2022⁹.

On 28 April 2022, the UK Government announced its decision to revise the current timetable for the introduction of all remaining import checks, with no further checks being introduced on EU goods in 2022. This decision is outlined in the Written

³ S.I. 2021/429

⁴ S.I. 2021/809

⁵ S.I. 2021/1096

⁶ S.S.I. 2021/297

⁷ S.S.I. 2021/342

⁸ S.S.I. 2021/493

⁹ S.S.I. 2022/90

Ministerial Statement published on that date¹⁰. Therefore, remaining import checks will not come into force as planned from 1st July 2022.

The UK Government has further indicated that a “Target Operating Model” is expected in Autumn 2022, which will set out the new regime of border import controls and will target the end of 2023 as the revised introduction date for import controls. The UK Government has indicated that the Border Operating Model¹¹ will also be updated to outline further phasing specific to SPS goods from the EU, indicating that updates are anticipated in Autumn 2022. The Scottish Government has no information on these updates, and continues to liaise with the UK Government to ascertain details and develop its own position,

The Instrument makes changes to TSP arrangements in light of this announcement. In particular:

- The Instrument changes the date for the ending of the TSP as set out in the Official Controls (Extension of Transitional Periods) Regulations 2021 from 30 June 2022 to 31 December 2022 so that no further import checks will come into force on SPS goods from the EU in 2022. The precise timeline for the introduction of checks after 2022 is still being developed. The TSP is being extended to the end of 2022 to reflect this.
- The Meat Preparations (Amendment and Transitory Modification) (England) (EU Exit) Regulations 2020 which is applicable in England, is also being amended to link the end date for the suspension of the requirement for meat products to be frozen, in relation to those products imported from the EU to GB, to the end of the TSP. This exemption is therefore extended to 31 December 2022. **An SSI is being prepared to legislate for this separately in Scotland.**
- The Official Controls Regulation is also amended to remove the suspension of the regulation-making powers in Articles 53(1) and 54(3), allowing them to be exercised during the TSP, meaning that further instruments can be made during the TSP to set further detailed rules on checks on EU SPS goods. The Official Controls Regulation is also amended to carve out high-priority plants and plant products from the scope of Article 44(2) which determine the appropriate frequency of controls on goods not presented to Border Control Posts. The frequency of checks on high-priority plants and plant products will be determined in accordance with the factors referred to in Article 54, which is enabled through this instrument. **Separate legislation is being prepared to deliver the plant health frequency of checks methodology in a UK SI to be made under Article 54 of the Official Controls Regulation (which will separately be notified to the Scottish Parliament) and fees (provision for which will be made in a forthcoming SSI to be laid in the Scottish Parliament).**

¹⁰ Written Ministerial Statement made on 28 April 2022, made by Mr Jacob Rees-Mogg, Minister for Brexit Opportunities and Government Efficiency <https://questions-statements.parliament.uk/written-statements/detail/2022-04-28/hcws796>

¹¹ <https://www.gov.uk/government/publications/the-border-operating-model>

- Without this instrument, all SPS goods imported from EU to Great Britain will be obliged to comply with documentary, physical and identity checks at Border Control Posts across Great Britain from 1 July 2022.
- Introducing controls in July would have replicated the controls that the EU applies to their global trade. The UK Government has set out the rationale for a further extension to the transitional provisions as being that this would introduce complex and costly checks that would have then been altered later as our transformation programme is delivered. Therefore, the powers provided to change the end date for the transitional provisions must now be exercised, to revise the timeline for introduction of import controls for EU SPS goods as originally intended – that is, in a timeframe which was reasonable and achievable for the SPS imports sector, minimising the risk of food supply chain disruption.

Does the SI relate to a common framework or other scheme?

No

Summary of stakeholder engagement/consultation

Under the enabling powers for this SI, consultation is required before making new Regulations. The Secretary of State must consult such bodies or persons as appear to the Secretary of State to be representative of the interests likely to be substantially affected by these regulations and such other bodies or persons as the Secretary of State may consider appropriate. In order to meet these requirements, the UK Government, with the agreement of the Devolved Administrations, is conducting a consultation with stakeholders on the proposed amendments. The Scottish Government is in regular contact and communication with DEFRA and other Devolved Administrations and this instrument has been developed in collaboration with Devolved Administration officials.

A note of other impact assessments, (if available)

The UK Government considers that the impact on business, charities or voluntary bodies is generally low. This instrument better enables businesses to meet readiness requirements for the revised timetable for introduction of SPS borders checks in 2023, involving a technologically advanced approach to controls, aiming to reduce friction and costs of trade for businesses.

However, it is recognised that businesses running Border Control Posts have made significant investment in recruiting staff and investing in infrastructure ahead of the anticipated introduction of checks from 1st July 2022. Discussions will be taking place with these businesses to help mitigate the decision to delay import checks until 2023.

There is no, or no significant, impact on the public sector.

A full impact assessment has not been produced for this instrument as DEFRA's assessment is that there is no, or no significant, impact on the private, voluntary or public sectors is foreseen.

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

On 28 April 2022, the UK Government announced its decision to revise the current timetable for the introduction of all remaining import checks, with no further checks being introduced on EU goods in 2022. On balance, the Scottish Government considers that, given the circumstances, the best approach is for the changes to apply in relation to imports into Scotland as well. This would allow import arrangements to remain consistent across Great Britain.

Diverging from the UK Government's proposals would result in different import requirements for different nations, which will likely lead to stakeholder confusion and disruption to trade. If Scotland rolls out the import checks that were scheduled for July, trade that would have usually come directly to Scotland will likely be diverted to the other three nations, as exporters would aim to avoid certification requirements as well as BCP checks and fees.

The biosecurity benefit of continuing with the rollout of the import checks that were scheduled for July is likely to be low, as most imports into Scotland take place through a port in the other three nations (mostly ports in the south of England). Furthermore, there would be practical difficulties if Scotland were to continue with the rollout of the import checks that were scheduled for July. The IT systems for the management of borders are developed by the UK Government. Even if Scotland would want to use these system to rollout the import checks in July, these systems will not be ready for that date. Without these systems, Scotland would not be able to perform effective checks.

Legislation is now required to amend the end of the transitional staging period to 31 December 2022, after which the UK Government plans for import checks to be phased in on SPS goods entering Great Britain from the EU.

As such, given the reasons outlined above, Scottish Ministers consider that it is appropriate to consent to the instrument to give effect to these changes.

Intended laying date (if known) of instruments likely to arise

The Instrument will be laid on 8 June 2022 and come into force on 29 June 2022.

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

An initial draft of the Instrument has only been shared in recent days and it is therefore regrettable that on this occasion it has not been possible to comply with the requirement that members should have a full 28 days to scrutinise before the instrument is laid.

Information about any time dependency associated with the proposal

The instrument must come into force before 1 July 2022 or the transitional staging period would otherwise end by this date

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

Not applicable.

Any significant financial implications?

Not applicable.

SI NOTIFICATION: SUMMARY

Title of Instrument
The Official Controls (Extension of Transitional Periods) (Amendment) Regulations 2022
Proposed laying date at Westminster
8 June 2022
Date by which Committee has been asked to respond
6 June 2022
Power(s) under which SI is to be made
Article 144(6) of, and paragraph 2 of Annex 6 to, the Regulation (EU) 2017/625.
Categorisation under SI Protocol
Type 1
Purpose
<p>This new Statutory Instrument will provide for OCR checks currently scheduled to come into force in July 2022, to be introduced from December 2022. In particular, this proposed legislation:</p> <ul style="list-style-type: none">• Amends the Official Controls (Extension of Transitional Periods) Regulations 2021 to change the end date of the transitional staging period, as previously amended by the Official Controls (Extension of Transitional Periods) (No.2) Regulations 2021 (S.I. 2021/1443) and the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No. 3) Regulations 2021 (S.S.I. 2021/493), from 30th June 2022 to 31st December 2022.• Amends the Official Controls Regulation to remove the suspension of the regulation-making powers in Articles 53(1) and 54(3), allowing them to be exercised during the transitional staging period, meaning that further instruments can be made during the transitional staging period to set further detailed rules on checks on EU SPS goods, in addition to setting the appropriate frequency rates for these checks for certain plants and plant products.• Amends the Official Controls Regulations to carve out high-priority plants and plant products from the scope of Article 44(2) which determine the appropriate frequency of controls on goods not presented to Border Control Posts.• Amends The Meat Preparations (Amendment and Transitory Modification) (England) (EU Exit) Regulations 2020 (SI/2020/1666)12, which is applicable in England, to link the end date for the suspension of the requirement for meat products to be frozen, in relation to those products imported from the EU to GB, to the end of the transitional staging period. This exemption is therefore extended to 31st December 2022. The

Scottish Government will legislate for this separately and Welsh Government will likely be making similar provision in Wales.

Other information

On 28 April 2022, the Government announced its decision to revise the current timetable for the introduction of all remaining import checks, with no further checks being introduced on EU goods in 2022. This decision is outlined in the Written Ministerial Statement published on that date, which recognised that businesses have faced a range of challenges over recent months as they recover from the global pandemic, in addition to the general public being affected by rising costs caused by Russia's war in Ukraine and energy prices. Therefore, remaining import checks will not come into force as planned from 1st July 2022.

Publication of a Target Operating Model is expected in Autumn 2022, which will set out the new regime of border import controls and will target the end of 2023 as the revised introduction date for import controls. This will include a technologically advanced approach to controls, aiming to reduce friction and costs of trade for businesses. The Border Operating Model will also be updated to outline further phasing specific to SPS goods from the EU. Additional time is needed to develop these, with updates anticipated in Autumn 2022.

While the UK Government has made it clear that new requirements for official controls will not now be introduced in 2022, the precise timeline for the introduction of those checks after 2022 is still being developed. The transitional staging period is being extended to the end of 2022 to reflect this. The Government therefore anticipates that a further statutory instrument will be needed in Autumn 2022 to reflect the updated Border Operating Model, outlining the phasing of import checks in 2023.

SG Policy contact: Michael Mawdsley