

## **NOTIFICATION TO THE SCOTTISH PARLIAMENT**

**The Official Controls (Extension of Transitional Periods) Regulations 2021 - Defra/OFC/08  
Untitled SI – Defra/OFC/010**

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

Type 1.

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

The UK Government (UKG) plans to lay the Instrument: 'Defra/OFC/08: The Official Controls (Extension of Transitional Periods) Regulations 2021' on 8 July 2021 using negative procedure and are seeking Scottish Ministers' consent as the powers under which the Regulations are being made cannot be exercised in relation to Scotland without Scottish Ministers' consent. Scottish Ministers consent is also sought for Defra/OFC/010 (currently untitled SI) which will be made following no procedure. It will also come into force on 30 July.

UK Ministers have sought Scottish Ministers consent to exercise powers enabling them to reset the timetable for the phased introduction of controls on imports from the EU into Great Britain, in line with the UK Government's announcement of 11 March 2021 as part of the Border Operating Model.

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

### **Summary of the proposals**

The proposed amendments in these instruments relate to controls on imports to Great Britain of animals and animal products, plants and plant products, including food and other imports relevant to the agri-food chain – collectively known as sanitary and phyto-sanitary ("SPS") checks. The draft instruments intend to do two things:

- It extends the period in which importers from the rest of the world (outside the EU or EEA) may use EU form certificates and documents (rather than ones produced by the Secretary of State or the Scottish Ministers) by amending; and
- It extends beyond 31 July 2021 the end date of the transitional staging period for SPS products entering GB from EU or EEA member states.

On 10 March 2021, the EU Exit Operations Cabinet Committee ("XO Committee") of the UK Government agreed that the original SPS border control transitional provisions in legislation will not operate in an appropriate way to complete the correction of the deficiency for which they were originally intended – that is, the

need to introduce checks on EU imports in a way that is reasonable and proportionate to the capacity of businesses affected.

The Official Controls Regulation, and the Trade in Animals and Related Products Regulations applying within Scotland, England and Wales, must be amended, to extend the period before which import controls for EU and EEA SPS goods come into effect. This amendment will take the form of an extension to the timeline when official controls on animals and goods entering Great Britain will be phased in to ensure that necessary infrastructure and processes are in place at Border Control Points with the intention of minimising the risk of any disruption. This will also allow businesses affected by the pandemic to familiarise themselves with the new SPS compliance requirements and IT systems

The amendments also extend (from July 2021 to October 2021) the grace period during which Great Britain can legally accept current EU model Export Health Certificates (“EHCs”) accompanying consignments of animals and animal products imported from non-EU countries to Great Britain. This extension is to allow further time for specific ‘Rest of World’ countries to incorporate the new Great Britain EHCs into their export systems, if needed, where there are particular issues that have been raised in line with the introduction of certificates from the EU. The two SIs make the following specific changes to ensure the grace period is extended to October—

- OFC/010 makes provision in respect of certificates under regulation 46 of the Official Controls (Animals, Feed and Food, Plant Health etc) (Amendment) (EU Exit) Regulations 2020.
- OFC/08 makes provision in respect of certificates under regulations 69 and 70 of the Import of and Trade in, Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020, schedule 5 of the Trade in Animals and Related Products (Scotland) Regulations 2012 and regulations 33 and 34 of the Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) (No. 2) Regulations 2020.

OFC/08 also makes further changes via amendments to retained Regulation (EU) 2017/625(the Official Controls Regulation), the key elements being:

- Pre-notification requirements for Products of Animal Origin (POAO) will not be required until **1 October 2021**. Export Health Certificate (EHC) requirements for POAO will come into force on the same date. Pre-notification requirements will also apply for animal by-products not already subject to them, and health certificates will be required for ABPs from this date;
- ID and Physical SPS checks for POAO, germinal products, and ABP will not be required until **1 January 2022**;
- Pre-notification requirements and documentary checks will be required for low risk plants and plant products, and will be introduced from **1 January 2022**; and

- **From 1 March 2022**, risk-based checks at BCPs will take place on each consignment of SPS imports from the EU or the EEA, as with SPS imports from the rest of the world.

In addition, amendment is made to Annex 6 of retained Regulation (EU) 2017/625 (the Official Controls Regulation), which provides that where specific provision is not made, the transitional staging period (i.e. the end of phasing of import checks) for all other official controls will end on 28 February 2022.

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

No.

### **Summary of stakeholder engagement/consultation**

UK Government (with DAs' input) engaged with stakeholders on the proposed amendments. No substantive comments or issues were raised.

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)**

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

A full impact assessment has not been produced for this instrument as 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**

Scottish Ministers consider that consenting to the SIs is the most effective, pragmatic and transparent way to make the proposed changes.

The Scottish Government was informed of the UK Government's changes to the import phases for EU goods as outlined in the published Border Operating Model on 11 March with the justification being as a result of Covid, business readiness and the need for businesses to focus on economic recovery.

Legislative amendments are now needed to revise the earlier dates specified for accompanying health certificate requirements and the introduction of checks. These SIs will amend the original timetable, ensuring that the transitional staging period for EU and EEA goods will not come to an end in July 2021. It will ensure that necessary infrastructure and processes are in place at Border Control Posts,

before import SPS checks are fully phased in, further minimising the risk of any disruption.

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

The SIs will be laid on 8 July 2021 and come into force on 30 July 2021.

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

A draft of the instrument has been shared with officials only very recently. At this stage, with Parliament entering recess, there is no practical scope to bring forward a separate Scottish statutory instrument to revise the end date of the transitional staging period.

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

Not applicable.

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

Not applicable. No specific monitoring arrangements are needed.

**Any significant financial implications?**

Not applicable.

## SI NOTIFICATION: SUMMARY

<b>Title of Instrument</b> The Official Controls (Extension of Transitional Periods) Regulations 2021 - Defra/OFC/08 Defra/OFC/010 (currently untitled SI).
<b>Proposed laying date at Westminster</b> 8 July 2021
<b>Date by which Committee has been asked to respond</b> N/A
<b>Power(s) under which SI is to be made</b> the instrument exercises powers to make transitional provision conferred by 3 previously made EU exit instruments:  <i>OFC/08</i> <ul style="list-style-type: none"><li>• Regulation 71(1) of the Import of, and Trade in, Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020,</li><li>• Regulation 33(2) of the Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) (No.2) Regulations.</li><li>• Article 144(6) and paragraph 2 of Annex 6 of retained Regulation (EU) 2017/625 (“the Official Controls Regulation”).</li></ul> <i>OFC/010</i> <ul style="list-style-type: none"><li>• Regulation 46(2) of the Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020</li></ul>
<b>Categorisation under SI Protocol</b> Type 1
<b>Purpose</b>  The proposed amendments in these instruments relate to controls on imports to Great Britain of animals and animal products, plants and plant products, including food and other imports relevant to the agri-food chain – collectively known as sanitary and phyto-sanitary (“SPS”) checks. The draft instruments intend to do two things: <ul style="list-style-type: none"><li>• it extends the period in which importers from the rest of the world (outside the EU or EEA) may use EU form certificates and documents (rather than ones produced by the Secretary of State or the Scottish Ministers); and</li><li>• It extends beyond 31 July 2021 the end date of the transitional staging period for SPS products entering GB from EU or EEA member states.</li></ul> The Official Controls Regulation, and the Trade in Animals and Related Products Regulations applying within Scotland, England and Wales must be amended, to extend the period before which import controls for EU and EEA SPS goods come into effect. This amendment will take the form of an

extension to the timeline when official controls on SPS goods entering Great Britain will be phased in to ensure that necessary infrastructure and processes are in place at Border Control Points with the intention of minimising the risk of any disruption. This will also allow businesses affected by the pandemic to familiarise themselves with the new SPS compliance requirements and IT systems. Where provision is not explicitly provided for in the SI, amendments are made to Annex 6 of the Official Controls Regulation that the transitional staging period for all other official controls will end on 28 February 2022.

The amendments also extend (from July 2021 to October 2021) the grace period during which Great Britain can legally accept current EU model Export Health Certificates (“EHCs”) accompanying consignments of animals and animal products imported from non-EU countries to Great Britain. This extension is to allow further time for specific ‘Rest of World’ countries to incorporate the new Great Britain EHCs into their export systems, if needed, where there are particular issues that have been raised in line with the introduction of certificates from the EU.

Legislative amendments are now needed to revise the earlier dates specified for accompanying health certificate requirements and the introduction of checks. These SIs will amend the original timetable, ensuring that the transitional staging period for EU and EEA goods will not come to an end in July 2021.

#### **Other information**

This notification should be read alongside previous notifications (OFC/02 - the Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020 which introduced the phased checks programme, OFC/06 - Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) (No. 2) Regulations 2020 which made provision in relation to extending the use of EU certificates, and PH/011 The Trade and Official Controls (Transitional Arrangements for Prior Notifications) (Amendment) Regulations 2021 which amends Annex 6 to Regulation (EU) 2017/625 to change the date from which transitional prior notification for products of animal origin and specific plant and plant products apply from 1 April 2021 to 31 July 2021; amends schedule 5 to the Trade in Animals and Related Products (Scotland) Regulations 2012 to change the date from which transitional SPS certification requirements for products of animal origin apply from 1 April 2021 to 31 July 2021.

The changes made by OFC/08 further extend the transitional period in respect of prior notification for plants to 31 December and for SPS certification requirements for POAO to 30 September 2021.

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