

Rural Affairs and Islands Committee
Wednesday 4 March 2026
9th Meeting, 2026 (Session 6)

Note by the Clerk on the Official Controls (Location of Border Control Posts) (Scotland) Regulations 2026 (2026/61)

Overview

1. At this meeting, the Committee will consider the following Scottish statutory instrument (SSI), which is subject to the negative procedure.¹ The Committee is invited to consider the instrument and decide what, if any, recommendations to make.
2. More information about the instrument is summarised below:
 - **Title of instrument:** [The Official Controls \(Location of Border Control Posts\) \(Scotland\) Regulations 2026 \(SSI 2026/61\)](#)
 - **Laid under:** [Articles 64\(2\)](#) and [144\(6\)](#) of [Regulation \(EU\) 2017/625](#) of the European Parliament and of the Council
 - **Laid on:** 9 February 2026
 - **Procedure:** Negative
 - **Deadline for committee consideration:** 16 March 2026 (Advisory deadline for any committee report to be published)
 - **Deadline for Chamber consideration:** 20 March 2026 (Statutory 40-day deadline for any decision whether to annul the instrument)
 - **Commencement:** 21 March 2026

Purpose of the instrument

3. The purpose of this instrument is to amend legislation to introduce an exception to the existing rules relating to the designation and location of border control posts (BCPs) in Scotland.
4. Currently, BCPs must be located in the immediate vicinity of a point of entry, unless geographical constraints prevent this. This exception would provide that a BCP may be located away from the immediate point of entry if both the BCP and the point of entry are within the same “Scottish Green Freeport”.

¹ [Further information about secondary legislation and the negative procedure is available on the Parliament's website](#)

5. Scotland currently has two such freeports: [Inverness and Cromarty Firth](#), and [Firth of Forth](#). The policy note explains that these “are areas which have already been identified as ones where special tax sites may be designated in order to encourage investment and development in the area”.
6. The exception is subject to two conditions:
 1. The BCP must not be used to carry out official controls on animals.
 2. Adequate measures must be in place to manage risks to human, animal, plant health, and the environment.
7. The policy note states that “official controls and official activities are carried out at the first point of entry on Sanitary and Phytosanitary (SPS) products so that those products are not diverted or offloaded before those controls and activities can be carried out”. Since leaving the EU, imported products from the EU and certain other territories are required to enter Scotland through a designated BCP.
8. The policy note explains that, in May 2025, the UK Government and the EU agreed a “Common Understanding”² to work towards creating a Common Sanitary and Phytosanitary (SPS) Area under the SPS agreement. If an SPS Agreement is finalised, most movements of animals, animal products, plants, and plant products between the UK and the EU would no longer require many of the current certificates and border checks. While the prospect of an SPS agreement is welcomed by the Scottish Government, the policy note states that this agreement creates “...uncertainty on investment decisions around new BCP facilities”.
9. The policy note explains that the instrument aims to address the uncertainty of the present situation and help potentially facilitate new trade routes between Scotland and the EU, while protecting biosecurity and public health.
10. The [Scottish Government ran a targeted public consultation between 16 December 2025 to 15 January 2026](#). The [Business and Regulatory Impact Assessment \(BRIA\)](#) states that 12 responses were received, showing broad support for increasing flexibility in the siting of BCPs. However, the BRIA explains that some stakeholders had a number of concerns, such as whether such arrangements should be time-limited, weakened biosecurity controls, reduced traceability, as well as increasing resource pressures on local authorities.
11. The BRIA states that no changes were made to the proposals following consultation, although further engagement with public authorities on enforcement is planned should businesses adopt the updated requirements. Neither the consultation responses nor an analysis of responses has been published but the Scottish Government has indicated that a full analysis of the consultation responses will be published on its website “at the earliest opportunity”.

² <https://www.gov.uk/government/publications/ukey-summit-key-documentation/uk-eu-summit-commonunderstanding-html>

12. The policy note accompanying the instrument is included in Annexe A. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.
13. Ahead of this meeting, parliamentary officials wrote to the Scottish Government seeking further information on the instrument. The questions and answers are included in Annexe B.
14. Parliamentary officials' questions picked up on a number of the concerns identified in the Scottish Government's consultation. In relation to a time-limit on the provision, the response doesn't state that there is a time limit but instead that an SPS agreement "would mean the requirement for BCPs would become minimal, Scottish Ministers may then wish to revisit the legislative changes for review". In relation to concerns about weakened biosecurity controls, and noting that BCPs away from points of entry have been operational in England since 2024, the Scottish Government indicates that it is "awaiting details from colleagues in DEFRA on any risks that have been encountered in England".

Delegated Powers and Law Reform Committee consideration

15. The [DPLR Committee considered the instrument on 17 February 2026 and made no recommendations in relation to the instrument.](#)

Rural Affairs and Islands Committee consideration

16. So far, no motion recommending annulment has been lodged.
17. Members are invited to consider the instrument and decide whether there are any points they wish to raise.

**Clerks to the Committee
February 2026**

Policy note for the Official Controls (Location of Border Control Posts) (Scotland) Regulations 2026 (2026/61)

Introduction

The above instrument was made in exercise of the powers conferred by Articles 64(2) and 144(6) of Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products. The instrument is subject to negative procedure.

The overarching policy intent of these Regulations is to address the uncertainty for investment decisions regarding new Border Control Post facilities at a point of entry, thus facilitating new potential trade routes between Scotland and the EU. The Regulations amend Commission Delegated Regulation (EU) 2019/1012 (“the 2019 Regulation”) supplementing Regulation (EU) 2017/625 (“The Official Controls Regulation”) of the European Parliament and of the Council by derogating from the rules on the designation of control points and from the minimum requirements for Border Control Posts. The instrument establishes an additional case and conditions under which a Border Control Post may be situated at a distance other than in the immediate vicinity of a point of entry into Scotland.

Policy objectives

Official controls and official activities are carried out at the first point of entry on Sanitary and Phytosanitary (SPS) products so that those products are not diverted or offloaded before those controls and activities can be carried out. Since leaving the EU, the introduction of import controls under the Border Target Operating Model (BTOM) has meant that imported products from the EU and certain other territories are required to enter Scotland through a designated Border Control Post (BCP), a requirement under schedule 5 of the Trade in Animals and Related Products (Scotland) Regulations 2012³ and Annex 6 to Regulation (EU) 2017/625 (the Official Controls Regulation)⁴.

Currently assimilated direct legislation sets out the minimum requirements on the location of BCPs. Article 64 of Regulation (EU) 2017/625 of the European Parliament and of the Council (“the Official Controls Regulation”)⁵ stipulates that a BCP must be in the immediate vicinity of the port of entry. Article 3 of Commission Delegated Regulation (EU) 2019/1012⁶ supplements this by allowing a BCP to be situated at a distance other than in the immediate vicinity of the point of entry into Great Britain but only where specific geographical constraints prevent or restrict the efficient performance of official controls and other official activities.

In May 2025, the UK Government and the European Union (EU) agreed a Common

³ <https://www.legislation.gov.uk/ssi/2012/177/schedule/5>

⁴ <https://www.legislation.gov.uk/eur/2017/625/annex/6>

⁵ <https://www.legislation.gov.uk/eur/2017/625/article/64>

⁶ <https://www.legislation.gov.uk/eur/2019/1012/article/3>

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Understanding⁷ including agreeing to work towards establishing a 'Common Sanitary and Phytosanitary (SPS) Area' under an SPS Agreement. If an SPS Agreement is reached, this would result in the vast majority of movements of animals, animal products, plants and plant products, between Great Britain and the EU no longer requiring many of the certificates and border controls that are currently in place.

The possibility of an SPS agreement with the EU is a welcome possibility that the Scottish Government has long advocated for. It does, however, also create uncertainty on investment decisions for establishing new BCP facilities at a point of entry. Decisions to establish the facilities required for a BCP are principally investment decisions for operators.

Under Article 64(2) of the Official Controls Regulation, Scottish Ministers may make regulations concerning the cases where, and conditions under which, a BCP may be situated at a distance other than in the immediate vicinity of the point of entry into Scotland.

This instrument exercises that power to provide that a BCP may be located at a place not in the immediate vicinity of a point of entry, where the BCP and the point of entry are in the same freeport, known in Scotland as "Scottish Green Freeports". These are areas which have already been identified as ones where special tax sites may be designated in order to encourage investment and development in the area. There are currently two in Scotland: Inverness and Cromarty Firth, and Firth of Forth.

In order to protect biosecurity and public health, the instrument imposes conditions that, in these cases, the competent authority must be satisfied that the person who will be responsible for operating the BCP will put in place adequate measures to manage any risk to human, animal or plant health or the environment arising from the distance from the point of entry to the BCP.

This will help to address the uncertainty on investment decisions around new BCP facilities. It could allow an existing BCP designated for a specific category of goods at one point of entry to also serve as the BCP for the same goods arriving at another point of entry, or it could allow an existing BCP to be designated for an additional point of entry in its area with only minor facility adjustments to accommodate a new category of goods, or it could support the development and designation of a new BCP to serve multiple points of entry within the area. The measures are targeted at areas for development and investment, will ensure that goods are not carried over significant distances before checks are carried out, and that satisfactory arrangements will need to be in place to manage any risks arising from the location of the BCP.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

⁷ <https://www.gov.uk/government/publications/ukey-summit-key-documentation/uk-eu-summit-commonunderstanding-html>

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Annexe A

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the Official Controls (Location of Border Control Posts) (Scotland) Regulations 2026 are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU because Great Britain is not part of the EU's internal market. These measures are a consequence of no longer being an EU Member State, in line with international obligations that the UK shares with the EU, and will not undermine the prospects of an independent Scotland's potential EU accession.

The Statement of Common Understanding made by the UK Government and the EU on 19 May 2025 contains an intention to work towards establishing a Common Sanitary and Phytosanitary Area by way of a European Union–United Kingdom Sanitary and Phytosanitary Agreement (SPS Agreement) which should provide for dynamic alignment of the rules in Great Britain with EU law, but with a short list of limited exceptions to dynamic alignment⁸. The Scottish Government does not consider that the Regulations will undermine the prospects of working to establish any eventual European Union–United Kingdom Sanitary and Phytosanitary Agreement.

Consultation

To comply with the requirements of Article 144(7) of the Official Controls Regulation, before making these Regulations, the Scottish Ministers consulted such bodies or persons as appear to the Scottish Ministers to be representative of the interests likely to be substantially affected by these Regulations and such other bodies or persons as the Scottish Ministers considered appropriate.

The consultation responses show broad support for increasing flexibility in the siting of BCPs.

A full list of those consulted and who agreed to the release of this information will be released with the consultation report to be published on the Scottish Government website.

Impact Assessments

A Children's Rights and Wellbeing Impact Assessment (CRWIA) and Equality Impact Assessment (EQIA) have been completed on the draft SSI and are attached.

⁸ [UK-EU Summit - Common Understanding \(HTML\) - GOV.UK](#)

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is considered negligible as it will facilitate trade whilst also underpinning biosecurity controls.

Scottish Government
Agriculture and Rural Economy Directorate
February 2026

Questions to the Scottish Government on the Official Controls (Location of Border Control Posts) (Scotland) Regulations 2026 (2026/61)

Q. To summarise, the instrument gives further flexibility in the location of BCPs. Where a point of entry is located within a Scottish Green Freeport the BCP may be located away from the point of entry so long as it is also within the same freeport. The purpose of this is to give some flexibility while an SPS agreement is negotiated between the UK and the EU. The flexibility is deemed to be required during this period of uncertainty to avoid potentially unnecessary investment from being made in establishing new BCP infrastructure which will then not be required if the UK and EU reach an SPS agreement. Is this a correct interpretation of what the SSI does and the reasons for making these changes?

A. Yes this is correct.

Q. The English rules, in force since 2024, allow BCPs away from points of entry only in the event of geographical constraints. The key difference in Scotland proposed in this SSI is to allow BCPs to be away from the point of entry where the BCP and point of entry are within the same freeport, even if there are no geographical constraints present. Recognising that freeport areas are quite large (e.g. [a large area around the Firth of Forth](#)), is the Scottish Government confident that moving unchecked goods around these areas does not pose a potential risk to health or biosecurity? How will these risks be managed and monitored? What might “adequate measures to manage any risk to human, animal or plant health, or risk to the environment” look like?

A. Any port operator/business that wishes to utilise this new legislation, would still be required to complete the BI39 expression of interest form, where they would then go through the full designation process. This will require full interaction with the appropriate Competent Authorities (CA's) such as Animal Plant Health Agency (APHA). Businesses will be responsible for presenting assurances to the CA's that Scotland's high biosecurity standards continue to be met. Without meeting these requirements, approval would not be granted and goods would have to enter a BCP at the point of entry.

Q. BCPs away from points of entry have been operational in England since the English regulations passed in 2024. Have there been any known biosecurity or health risks arising from these new arrangements in England?

A. Circumstances in England are different to that in Scotland, English regulations were brought in to prevent backlog and delays at the Port of Dover, in Scotland we are looking at encouraging new direct trade routes with the European Union – We are awaiting details from colleagues in DEFRA on any risks that have been encountered in England.

Q. The Committee is aware that a [consultation was held on this](#) in December 2025. The policy note states that the consultation showed broad support for flexibility in siting BCPs. It also states that “A full list of those consulted and who agreed to the

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release of this information will be released with the consultation report to be published on the Scottish Government website.” Will the consultation analysis be available for the Committee to see during the scrutiny period for this SSI?

A. SG officials are working on publication of the consultation results and hope to share these at the earliest opportunity.

Q. The December consultation says that the changes are intended to be time limited while an SPS agreement with the EU is being negotiated: “The proposed changes are only intended to deal with the uncertainty of the present situation while an SPS Agreement between the UK and the EU is negotiated. The proposed changes are not intended to be a permanent derogation from the minimum requirements as to the location of a BCP. If the negotiations for an SPS Agreement between the UK and the EU are unsuccessful, the Scottish Government may wish to allow some time for any operators who have benefited from the proposals to continue to benefit from them for a time limited period.” However, there appears to be no time limit or review point in the regulations. Is the intention still for this arrangement to be time limited while negotiations for an SPS agreement are ongoing? If so, at what point will the regulations be reviewed and the derogations amended?

A. If an SPS agreement is reached with the EU, it would mean the requirement for BCPs would become minimal, Scottish Ministers may then wish to revisit the legislative changes for review.