

POLICY NOTE

THE OFFICIAL CONTROLS (TRANSITIONAL STAGING PERIOD) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) (NO. 2) REGULATIONS 2021

SSI 2021/342

The above instrument is made in exercise of the powers conferred by paragraphs 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018 and of all other powers enabling them to do so.

The instrument is subject to negative procedure.

Purpose of the instrument

The Regulations amend Annex 6 of Regulation (EU) 2017/625 (EUR 2017/625) and Schedule 5 of the Trade in Animals and Related Products (Scotland) Regulations 2012, to change the date from which the requirement for prior notification of products of animal origin applies, from 1 October 2021 to 1 January 2022. They also amend the Trade in Animals and Related Products (Scotland) Regulations 2012 to change the date for which accompanying health certificates for products of animal origin and animal by-products are required from 1 October 2021 to 1 January 2022.

Policy Objectives

The changes made by this instrument relate to controls on imports to Scotland of products of animal origin, and animal by-products, which are part of the set of commodities known collectively as sanitary and phyto-sanitary (“SPS”) goods.

Operability legislation made in late 2020 under the European Union (Withdrawal) Act 2018 (“the EU Withdrawal Act”) set out a ‘transitional staging period’, to allow controls on EU SPS imports to be introduced over several months. This staging was intended to help trade sectors and related controls infrastructure to be ready for the additional volume of biosecurity checks which are a consequence of the decision to leave the European Union.

The second phase of the Border Operating Model (BOM) was due to commence 1 October 2021 seeing the introduction of Pre-notification requirements for Products of Animal Origin (POAO) . Export Health Certificate requirements for POAO and animal by-products (ABP) were also due to come into force on the same date.

On 14 September 2021, the UK Government announced its decision to revise the current timetable for the introduction of all remaining checks. The UK Government is bringing forward legislation to remove the requirement for the prior notification of POAO, and health certificate requirements for POAO and ABPs imported into England .

Without this instrument, from 1 October 2021 prior notification and health certificate requirements would continue to apply in Scotland but not in other parts of Great Britain, with businesses importing animal products into Scotland obliged to comply with the SPS control requirements for pre-notification and health certificates, as currently set out in legislation. This may result in disruption to trade, whilst having little benefit to biosecurity as imports

would be arriving in other parts of GB without prior notification or health certificate requirements.

Explanation of the law being amended by the regulations

This instrument changes the following legislation:

- Annex 6 to Regulation (EU) 2017/625 which makes provision for the transitional staging period in relation to territories subject to special transitional import arrangements; and
- Schedule 5 of the Trade in Animals and Related Products (Scotland) Regulations 2012 makes provision regarding the importation of animals and related products during the transitional staging period.

Reasons for and effect of the proposed change or changes on retained EU law

Following the decision of the UK Government, the currently applicable dates for the introduction of prior notification requirements for POAO and health certificates for POAO and ABPs are no longer considered appropriate transitional provision. The changes will amend that aspect of the transitional arrangements made in Regulation (EU) 2017/625 and the Trade in Animals and Related Products (Scotland) Regulations 2012

Statements required by European Union (Withdrawal) Act 2018

The Regulations are made in exercise of powers conferred paragraphs 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018

Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate

The Cabinet Secretary for Rural Affairs and Islands has made the following statement “In my view the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No. 2) Regulations 2021 do no more than is appropriate. This is the case because the Regulations make only minor necessary amendments to the transitional staging period

Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action

The Cabinet Secretary for Rural Affairs and Islands has made the following statement “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. These are necessary to facilitate trade and prevent disruption of trade into Scotland and protect food supply.

Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation

The Cabinet Secretary for Rural Affairs and Islands has made the following statement “In my view the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No. 2) Regulations 2021 do not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010

The Cabinet Secretary for Rural Affairs and Islands has made the following statement “In my view the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No. 2) Regulations 2021 have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare

The Cabinet Secretary for Rural Affairs and Islands made the following statement “In my view the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No. 2) Regulations 2021 have had due regard to the guiding principles on the environment and animal welfare as derived from the equivalent principles provided for in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union.”

Statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)

The Cabinet Secretary for Rural Affairs and Islands has made the following statement, “In my view the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No. 2) Regulations 2021 do not alter current policy on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)”.

An indication of how the regulations should be categorised in relation to the significance of the change proposed

Low - the amendments are solely to make relatively minor amendments to the transitional staging period.

Statement setting out the Scottish Ministers’ reasons for their choice of procedure

Negative procedure is considered appropriate as these Regulations make amendments to transitional arrangements. These Regulations not include provisions which fall within paragraph 1(2) of schedule 7 of the European Union (Withdrawal) Act 2018.

Consultation

Relevant interests likely to be substantially affected by the regulations and such other bodies or persons as Ministers have considered appropriate have been consulted.

Impact Assessments

Full impact assessments have not been prepared for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. There is expected to be no impact on business, charities or voluntary bodies.

Financial Effects

The Cabinet Secretary for Rural Affairs and Islands confirms that no BRIA is necessary, as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Agriculture and Rural Economy Directorate

September 2021