

POLICY NOTE

THE OFFICIAL CONTROLS (TRANSITIONAL STAGING PERIOD) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2022

SSI 2022/90

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

The instrument is subject to negative procedure.

Purpose of the instrument

To temporarily exempt goods which are produced in Northern Ireland or the Republic of Ireland and moved or imported into Great Britain from the Republic of Ireland from pre-notification requirements which came into force from 1 January 2022.

Policy Objectives

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.

Statutory instruments and Scottish 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 during this transitional staging period. These included amendments to regulations governing Official Controls, Trade in Animals and Related Products and Plant Health which provided for phased requirements for pre-notification, health and phytosanitary certification and documentary checks on imports of EU and EEA products of animal origin (“POAO”), animal by-products (“ABP”), plants, plant products and other objects. The dates for the end of the transitional staging period and the phased introduction of requirements within it have been amended previously by the Trade and Official Controls (Transitional Arrangements for Prior Notifications) (Amendment) Regulations 2021⁽²⁾, the Official Controls (Extension of Transitional Periods) Regulations 2021⁽³⁾, the Animal Health, Plant Health, Seeds and Seed Potatoes (Miscellaneous Amendments) Regulations 2021⁽⁴⁾, the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2021⁽⁵⁾, the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No. 2) Regulations 2021⁽⁶⁾, the Animal Products (Transitional Import Conditions)

¹ 2018 c. 16; paragraph 21 of schedule 7 was amended by paragraph 53 of schedule 5 of the European Union (Withdrawal Agreement) Act 2020 (c. 1).

² S.I. 2021/429

³ S.I. 2021/809

⁴ S.I. 2021/1229

⁵ S.S.I. 2021/297

⁶ S.S.I. 2021/342

(Miscellaneous Amendment) (Scotland) Regulations 2021(7) and the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No. 3) Regulations 2021(8) (“the December 2021 SSI”).

In December 2021 the UK Government laid an SI, the Official Controls (Extension of Transitional Periods) (England and Wales) (Amendment) (No. 2) Regulations 2021 (“the December 2021 UK SI”)(9). The December 2021 UK SI made similar provision for England and Wales to that made by the December 2021 SSI for Scotland. In particular both the December 2021 UK SI and the December 2021 SSI changed the end date of the transitional staging period to 30 June 2022.

Under the transitional staging period arrangements lower risk SPS products moving from the EU to GB which, under the transitional staging period arrangements, were not subject to pre-notification requirements prior to 1 January 2022 are subject to pre-notification from that date. But in the December 2021 UK SI and the December 2021 SSI provision was also made for a temporary exemption to apply during the transitional staging period to ensure that goods which form part of passengers’ personal luggage and intended for personal consumption or use, and small consignments of goods sent to natural persons and not intended to be placed on the market were not subject to the pre-notification requirements which apply from 1 January 2022.

In addition, in the December 2021 UK SI only, provision was made for a temporary exemption to apply during the transitional staging period so that the lower risk SPS goods in question produced in Northern Ireland or the Republic of Ireland and moved or imported into Great Britain from the Republic of Ireland were also not subject to the pre-notification requirements which came into force from 1st January 2022. This was intended to maintain the treatment of SPS goods arriving in GB from the Republic of Ireland per the arrangements in place before that date, to avoid any disruption while discussions around the operation of the Northern Ireland Protocol were ongoing.

This instrument mirrors for Scotland this provision in the December 2021 UK SI: it makes provision so that lower risk SPS goods produced in Northern Ireland or the Republic of Ireland and moved or imported into Scotland from the Republic of Ireland are not subject to the pre-notification requirements which came into force from 1 January 2022 during the transitional staging period. The absence of such provision has not had any effect on trade as there are at present no established direct trade routes from the Republic of Ireland to Scotland. But Scottish Ministers consider that it is important to have the same import controls in place as the rest of GB, in particular to avoid any possible barriers to the movement of Northern Ireland goods or that importers are required to follow different processes in Scotland than the rest of GB.

Explanation of the law being amended by the regulations

The law being amended by the regulations is:

- Regulation 2 amends provisions in the Trade in Animals and Related Products (Scotland) Regulations 2012(10) in relation to products of animal origin and other types of animal by-products.

7 S.S.I. 2021/432

8 S.S.I. 2021/493

9 S.I. 2021/1443

10 S.S.I. 2012/177

- Regulation 3 amends Regulation (EU) 2017/625 to re-state provision made in the December 2021 SSI to exclude products within the scope of Article 7 (goods which form part of passengers' luggage and which are intended for personal consumption or use) or Article 10 (small consignments of products sent to natural persons which are not intended to be placed on the market) of Commission Delegated Regulation (EU) 2019/2122 from requirements for imports of products of animal origin and certain plants, plant products and other objects to be subject to prior notification during the transitional staging period. It also makes new provision so that goods which are produced in Northern Ireland or the Republic of Ireland and imported into Scotland from the Republic of Ireland are also excluded.

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

Lower risk SPS goods produced in Northern Ireland or the Republic of Ireland arriving in Scotland from the Republic of Ireland will during the transitional staging period be exempt from pre-notification requirements introduced from 1 January 2022, in line with the position for equivalent goods movements into England and Wales as was given effect by the December 2021 UK SI.

Statements required by European Union (Withdrawal) Act 2018

The Regulations are made in exercise of powers conferred by paragraphs 1(1) and (3) of Part 1 of schedule 2 of, 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) Regulations 2022 do no more than is appropriate. This is the case because the Regulations make only necessary transitional amendments to ensure appropriate arrangements can be put in place for the remainder of 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 to ensure the same import provisions apply across GB, to facilitate trade, protect food supply and ensure effective disease prevention, eradication and control as well as for the continued protection of public health.

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) Regulations 2022 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) Regulations 2022 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) Regulations 2022 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) Regulations 2022 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 alter pre-notification requirements as part of the transitional staging period. Given that there are no established direct trade routes from the Republic of Ireland to Scotland the impact of the changes are limited.

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

Negative procedure is considered appropriate as the powers under the European Union (Withdrawal) Act 2018 are subject to negative procedure.

Consultation

Defra undertook a consultation exercise in December 2021 on behalf of Scottish Ministers, summarising the changes to be made by the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No. 3) Regulations 2021 and this instrument and inviting comments, in particular on the impact of revising the timeline for phased introduction of SPS checks, and on the potential impact if this instrument were not to be brought into force. The consultation was targeted at key stakeholders in the SPS sector, including representative trade and industry organisations, interest groups and Port Health Authorities. Over 120 organisations and individuals were consulted. At the close of consultation, Defra had received one response, which was supportive of the proposed measures and the swift laying of supportive legislation.

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

March 2022