

EXPLANATORY MEMORANDUM TO
THE OFFICIAL CONTROLS (EXTENSION OF TRANSITIONAL PERIODS)
(ENGLAND AND WALES) (AMENDMENT) (NO. 2) REGULATIONS 2021

2021 No. 1443

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to protect biosecurity and support trade by ensuring that within Great Britain, and between Great Britain and the ‘territory subject to special transitional import arrangements’ as defined in Annex 6 to Regulation (EU) 2017/625 (“the Official Controls Regulation”)¹, effective official border controls continue to operate following the end of the Transition Period.

2.2 The changes made by this instrument relate to controls on imports to England and Wales for the set of commodities known collectively as sanitary and phyto-sanitary (“SPS”) goods.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument will be laid on 15th December and will come into force on 30th December 2021, breaching the 21-day convention. The original intention was to lay this SI by 1st December, but has been held up by wider HMG consideration of the introduction of SPS checks which potentially impact on the unfettered market access policy for goods moving between Northern Ireland and Great Britain.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 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.

¹ ‘territory’ as defined in Annex 6 of 2020/1481 includes the European Union, EEA states, and other specified countries, referred to in this document as ‘the European Union’ or ‘EU’.

- 6.2 Those amendments included the introduction of a ‘transitional staging period’ for goods entering Great Britain from the EU and certain other 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.
- 6.3 Statutory instruments made and brought into force in late 2020, under EUWA powers, gave effect to the Government’s decision to introduce checks on EU SPS imports in phases, following the end of the Transition Period on 31st December 2020. These included amendments to regulations governing Official Controls, and Trade in Animals and Related Products, which required pre-notification, health certification and documentary checks on imports of EU Products of Animal Origin (“POAO”) and Animal By-Products (“ABP”) to be in force from 1st October 2021. These dates have been amended previously by the Trade and Official Controls (Transitional Arrangements for Prior Notifications) (Amendment) Regulations 2021 (S.I. 2021/429), the Official Controls (Extension of Transitional Periods) Regulations 2021 (S.I. 2021/809), the Official Controls (Extension of Transitional Periods) (England and Wales) (Amendment) Regulations 2021 (S.I. 2021/1096), the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2021 (S.S.I. 2021/297) and the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No. 2) Regulations 2021 (S.S.I. 2021/342).
- 6.4 On 14th September 2021, the Government announced its decision to revise the current timetable for the introduction of all remaining checks. 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 which has impacted supply chains across Europe, and that this impact is being felt particularly by the agri-food sector.
- 6.5 This instrument replaces the dates for the ending of the transitional staging period, as set out in the Official Controls (Extension of Transitional Periods) Regulations 2021 (S.I. 2021/809) with a single date – 30th June 2022 – so that the Official Controls Regulation will apply fully to all SPS goods starting from 1st July 2022. We plan to legislate further in early 2022 to set out specific requirements applying from 1st July 2022.
- 6.6 This instrument also amends the Trade in Animals and Related Products Regulations 2011 (S.I. 2011/1197) to enable enforcement powers to be operable in respect of animals and animal products in England while checks are being conducted away from Border Control Posts during the transitional staging period.
- 6.7 The Trade in Animals and Related Products Regulations 2011 (S.I. 2011/1197) and the Official Controls (Extension of Transitional Periods) Regulations 2021 (S.I. 2021/809) are both amended to require prenotification from 1st January 2022 of the arrival of all category 3 animal by-products not already subject to controls since 1st January 2021.
- 6.8 Personal goods which form part of passengers’ luggage and which are intended for personal consumption or use, small consignments of products sent to natural persons which are not intended to be placed on the market, and goods which are produced in Northern Ireland or the Republic of Ireland and moved or imported into Great Britain from the Republic of Ireland, are temporarily exempted from prenotification

requirements which otherwise come into force on POAO and ABPs from 1st January 2022.

- 6.9 The Meat Preparations (Amendment and Transitory Modification) (England) (EU Exit) Regulations 2020 (SI/2020/1666)², which is applicable in England, is also being amended to reflect the revised transitional staging period end date.
- 6.10 The instrument makes further consequential amendments to the following legislation, to provide for the changes to these dates to be reflected in related provisions:
- S.I. 2018/289 (“Plant Health etc. (Fees) (England) Regulations 2018”)
 - S.I. 2020/1482 (“Plant Health (Amendment etc.) (EU Exit) Regulations 2020”)

7. Policy background

What is being done and why?

- 7.1 To give effect to the Government decision on 14th September 2021, this instrument replaces the dates for the ending of the transitional staging period, as set out in the Official Controls (Extension of Transitional Periods) Regulations 2021 (S.I. 2021/809) with a single date – 30th June 2022 – so that the Official Controls Regulation will apply fully to all SPS goods from 1st July 2022.
- 7.2 The Meat Preparations (Amendment and Transitory Modification) (England) (EU Exit) Regulations 2020 (S.I. 2020/1666) is amended to extend the existing temporary suspension of the requirement for meat preparations imported into England from EEA member States, the Faroe Islands, Greenland or Switzerland, to be deep frozen, keeping this temporary easement in line with the revised transitional staging period controls. It will allow meat preparations from the EU to continue to be imported in a chilled condition until 1st July 2022.
- 7.3 Without this instrument, from 1st January 2022, businesses in GB importing POAO and high-priority plants and plant products from the EU and EU businesses exporting to GB will be obliged to comply with documentary, physical and identity checks at Border Control Posts, with checks on live animals and non-high priority plants and plant products taking place at Border Control Posts from 1st March 2022. Personal goods which form part of passengers’ luggage and are intended for consumption or use, small consignments of products sent to natural persons which are not intended to be placed on the market, and goods produced in the island of Ireland, including qualifying Northern Ireland goods moving to GB via the Republic of Ireland, would be subject to prenotification requirements from 1st January 2022. Additionally, Phytosanitary certificates would be required for all regulated plants and plant products from 1st January 2022.
- 7.4 The temporary exemption from prenotification requirements for goods produced in Northern Ireland or the Republic of Ireland and moved or imported into Great Britain from the Republic of Ireland, noted in paragraph 7.3 above, is intended to maintain the current treatment of SPS goods arriving in GB from the Republic of Ireland, to avoid any disruption while sensitive discussions around the operation of the Northern Ireland Protocol are ongoing.

² Amended by the Meat Preparations (Amendment and Transitory Modification) (England) (EU Exit) (Amendment) Regulations 2021 (S.I. 2021/366) and the Meat Preparations (Amendment and Transitory Modification) (England) (EU Exit) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/972).

- 7.5 Without this instrument, attempting to comply with these SPS requirements currently scheduled for 1st January 2022 would create a significant risk of sector confusion and disruption to the food supply chain into Great Britain.
- 7.6 The powers provided to change the end date for the transitional provisions must therefore now be exercised, to give effect to the 14th September revisions to 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.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.7 The retained EU Regulations referenced in Section 2 above formed part of the EU ‘Smarter Rules for Safer Food’ consolidated regulatory regime. This regime was designed to modernise, simplify and improve existing health and safety standards for the agri-food chain, taking a risk-based approach to animal, plant and public health protection, and introducing more efficient pest and disease control measures. As noted, these EU Regulations were fully retained and made operable in UK legislation, through a series of instruments laid in late 2020 to give effect to the requirements of EUWA.

Why is it being changed?

- 7.8 The instrument makes further provision, including changes to the Regulations listed in Section 6.5 above, to ensure biosecurity border controls on EU imports are operable within England and Wales, and deliver functioning SPS controls between the EU and England and Wales following the end of the EU Exit Transition Period.

What will it now do?

- 7.9 This instrument will enable the continued functioning of SPS controls between the EU and England and Wales following the end of the transitional staging period. The end of the transitional staging period is amended to 30th June 2022, after which full Official Controls Regulation checks will be phased in to apply to SPS goods entering GB from the EU.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.
- 8.2 The Official Controls (Extension of Transitional Periods) (Amendment) (No.2) Regulations 2021 amends instruments made under s2(2) of the European Communities Act 1972. In accordance with the requirements of the European Union (Withdrawal) Act 2018, the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.
- 8.3 The effect of the amendments on retained EU law is set out in section 7.

9. Consolidation

- 9.1 Not applicable to this instrument.

10. Consultation outcome

- 10.1 A consultation exercise was undertaken in December 2021, summarising the changes to be made by 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.
- 10.2 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.
- 10.3 At the close of consultation, Defra had received one response, which was supportive of the proposed measures and the swift laying of supportive legislation.
- 10.4 Devolved Administrations in Scotland and Wales have been consulted on the changes set out in this instrument as part of our process of seeking formal consent to lay. Both administrations support the need for this instrument at official policy level. Due to timing constraints within the Scottish Parliament, the Scottish Government is planning to lay a parallel Scottish Statutory Instrument on 20th December 2021.

11. Guidance

- 11.1 Guidance on the processes and requirements for the import of both EU and non-EU goods to the UK after the Transition Period are set out on gov.uk:
<https://www.gov.uk/prepare-to-import-to-great-britain-from-january-2021>;
<https://www.gov.uk/import-goods-outside-eu>
- 11.2 The Animal and Plant Health Agency, Food Standards Agency, and Forestry Commission are the relevant delivery bodies for these Regulations and are developing an implementation plan and associated guidance for publication on GOV.UK, which will be available on, or shortly after, the coming into force date of this instrument.

12. Impact

- 12.1 There is no significant negative impact on business, charities, or voluntary bodies. Any impact will be positive, as the instrument better enables businesses to meet readiness requirements for the revised timetable for introduction of SPS border checks in 2022.
- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because it does not set out new policy in the risk-based control of SPS imports.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 This instrument applies equally to all businesses importing SPS commodities covered by the original amending Regulations, including small businesses. The risk of biosecurity compromise is not mitigated by the size of the business.

14. Monitoring & review

- 14.1 No specific monitoring arrangements are needed.
- 14.2 As this instrument makes provision for the extension of time limited measures, and will only have effect for a limited time, no review clause is required.

15. Contact

- 15.1 Anna Molyneux, Head of OCR Policy & Legislation, SPS Programme at the Department for Environment, Food and Rural Affairs (telephone: 07776 619093 or email: anna.molyneux@defra.gov.uk) can be contacted with any queries regarding this instrument.
- 15.2 Peter Jinks, Deputy Director for SPS and Imports, Animal and Plant Health & Welfare Directorate, at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Benyon, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Equalities

- 1.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Benyon, has made the following statement:

“This instrument does 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.”

- 1.2 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Benyon, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to this instrument, I, Lord Benyon, 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.”

2. Explanations

- 2.1 The explanations statement has been made in section 7 of the main body of this explanatory memorandum.

3. Explanations where amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972

- 3.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Benyon has made the following statement regarding regulations made under the European Communities Act 1972:

“In my opinion there are good reasons for the Official Controls (Extension of Transitional Periods) (England and Wales) (Amendment) (No.2) Regulations 2021 to amend the Trade in Animals and Related Products Regulations 2011 (S.I. 2011/1197). This is because the amendments are consequential to ensure that the changes to the end date of the transitional staging period for applying official controls to goods imported into Great Britain from the EU are given effect. The effect of the amendments on retained EU law is set out in paragraph 7”