

**EXPLANATORY MEMORANDUM TO**  
**THE OFFICIAL CONTROLS (EXTENSION OF TRANSITIONAL PERIODS)**  
**(AMENDMENT) (ENGLAND) REGULATIONS 2022**

**2022 No. 1374**

**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 His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**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”)<sup>1</sup>, effective official border controls continue to operate following the end of the post-EU exit Transition Period.
- 2.2 The changes made by this instrument relate to controls on imports to England 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 20 December and will come into force on 30 December 2022, breaching the 21-day convention. The original intention was to lay this S.I. by 8 December, but this has been delayed due to ongoing Ministerial decisions regarding the future border regime, known as the Target Operating Model and the implications this has on transitional import arrangements.

**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 only.

**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.

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<sup>1</sup> ‘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 31 December 2020. These included amendments to regulations governing Official Controls, and Trade in Animals and Related Products.
- 6.4 The dates outlined in the Transitional Staging Period 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), the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No. 2) Regulations 2021 (S.S.I. 2021/342), the Official Controls (Extension of Transitional Periods) (England & Wales) (Amendment) (No.2) Regulations 2021 (S.I. 2021/1443), The Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No. 3) Regulations 2021 (S.S.I. 2021/493), and the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2022 (S.S.I. 2022/90) and the Official Controls (Extension of Transitional Periods) (Amendment) Regulations 2022 (S.I. 2022/621).
- 6.5 This latest instrument changes the end date of the Transitional Staging Period, as most recently amended by the Official Controls (Extension of Transitional Periods) (Amendment) Regulations 2022 (S.I. 2022/621) from 31 December 2022 to 31 January 2024. While the Government intends to implement import controls in line with the Target Operating Model (see paragraph 7.1), the precise timeline for the introduction of those checks is still being developed and will be published in draft shortly.
- 6.6 When the Official Controls (Extension of Transitional Periods) (Amendment) Regulations 2022 (S.I. 2022/621) came into force from 29 June 2022, the end dates for several temporary policies were linked to the end date of the Transitional Staging Period. These policies include:
- The 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. This will allow meat preparations from these countries to continue to be imported in a chilled condition.
  - the exemptions from import checks for personal goods which form part of passengers’ luggage (excluding plants for planting) and which are intended for personal consumption or use and small consignments of products sent to natural persons which are not intended to be placed on the market;

- pre-notification requirements for goods which are produced in Northern Ireland or the Republic of Ireland and moved or imported into Great Britain from the Republic of Ireland.

Therefore, these linked policies are also extended until 31 January 2024. Permanent policies are currently in progress and will be reflected in secondary legislation in due course.

- 6.7 The Devolved Administrations in Scotland and Wales have laid separate Statutory Instruments mirroring the changes outlined in this Explanatory Memorandum. This decision was made due to timing constraints and does not result in any divergence of SPS regimes in Great Britain. These instruments are: The Official Controls (Extension of Transitional Periods) (Amendment) (Wales) Regulations 2022 (S.I. 2022/1317); and The Official Controls and Import Conditions (Transitional Periods) (Miscellaneous Amendment) (Scotland) Regulations 2022 (S.S.I. 2022/371).

## 7. Policy background

### *What is being done and why?*

- 7.1 On 28th April 2022, the UK Government announced a pause to the introduction of further import controls on SPS goods from the EU to GB, and its intention to develop a Target Operating Model setting out a new regime of border import controls. This new regime will apply equally to EU and goods from the rest of the world, with a proportionate risk-based and technologically advanced approach to controls. At this time, the Government confirmed no additional checks would come into force during 2022 and therefore the Transitional Staging Period was extended to 31 December 2022. Further information on the planned import controls under the Target Operating Model will be communicated to stakeholders shortly.
- 7.2 The Transitional Staging Period therefore needs to be extended to enable this regime to be implemented and communicated with stakeholders. This instrument extends the end date of the Transitional Staging Period until 31 January 2024. It also extends the temporary policies outlined in paragraph 6.6 of this Explanatory Memorandum for the same reason.

### *Explanations*

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

- 7.3 The Transitional Staging Period applying to imports of SPS goods from the EU to GB was due to end on 31 December 2022; resulting in documentary, physical and identity checks being required at Border Control Posts for these goods across Great Britain from 1 January 2023. Additionally, official certificates, including health and phytosanitary certificates would be required for all animal products and regulated plants, plant products and other objects respectively.

#### *Why is it being changed?*

- 7.4 Introducing controls from January 2023 would replicate the controls that the EU applies to their global trade. This would mean introducing complex and costly checks that would have then been altered later as our transformation programme is delivered approximately 12 months later. Therefore, the powers provided to change the end

date for the transitional provisions must now be exercised, to revise the timeline for introduction of import controls for EU SPS goods as originally intended – that is, in a timeframe which is achievable for the SPS imports sector, minimising the risk of food supply chain disruption.

What will it now do?

- 7.5 This instrument will enable the continued functioning of SPS controls between the EU and GB following the end of the Transition Period. The end of the Transitional Staging Period is amended to 31 January 2024, so SPS goods will not be subject to full import controls from 1 January 2023. Further details of the Target Operating Model will be published shortly.

**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.

**9. Consolidation**

- 9.1 Not applicable to this instrument.

**10. Consultation outcome**

- 10.1 A consultation exercise was undertaken in December 2022, summarising the changes to be made by this instrument and inviting comments 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 80 organisations and individuals were consulted.
- 10.3 At the close of consultation, Defra had received 11 responses. These responses were broadly supportive of the extension to prevent disruption to industry. Stakeholders are also eager to scrutinise the Target Operating Model and implementation timetable when it is published.

**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>

**12. Impact**

- 12.1 The impact on business, charities or voluntary bodies is generally low. This instrument better enables businesses to meet readiness requirements for the revised timetable for introduction of SPS borders checks, involving a technologically advanced approach to controls, aiming to reduce friction and costs of trade for businesses.
- 12.2 There is no, or 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, with no new regulatory burdens being introduced on small businesses. The risk of biosecurity compromise is not mitigated by the size of the business.

### **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation is that these measures will be kept under review, with permanent policies for the temporary arrangements in paragraph 6.6 to be announced and outlined in secondary legislation in due course.
- 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 & Imports at the Department for Environment, Food and Rural Affairs (telephone: 07776 619093 or email: [anna.molyneux@defra.gov.uk](mailto: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, Minister of State 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
Appropriateness	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 offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
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.

<b>Statement</b>	<b>Where the requirement sits</b>	<b>To whom it applies</b>	<b>What it requires</b>
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.”