

**EXPLANATORY MEMORANDUM TO**  
**THE OFFICIAL CONTROLS (LOCATION OF BORDER CONTROL POSTS)**  
**(ENGLAND) REGULATIONS 2024**

**2024 No. 416**

**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.

**2. Purpose of the instrument**

2.1 The purpose of this instrument is to amend the tests that must be met for the derogation from the requirement in Article 64(2) of Regulation (EU) 2017/625 (“the Official Controls Regulation”) for a border control post (BCP) to be situated in the immediate vicinity of the point of entry for imports of animals, plants and related products. The instrument amends Commission Delegated Regulation (EU) 2019/1012 (“rules on the designation of control points and from the minimum requirements for border control posts”).

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 None.

**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 (“assimilated law”). It also provided for amendments to be made to address deficiencies arising from EU exit.

6.2 This instrument amends the supplementary requirements to Regulation (EU) 2017/625 that sets out the rules on the siting of border control posts and the minimum requirements they must meet if located away from the immediate vicinity of the point of entry into Great Britain. The amendments are to Commission Delegated Regulation (EU) 2019/1012 supplementing Regulation (EU) 2017/625 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 changes will apply to England only.

## **7. Policy background**

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

- 7.1 The UK Government published the Border Target Operating Model (BTOM) in August 2023. The BTOM will implement the required SPS checks on EU imports thereby implementing this part of the Trade and Cooperation Agreement with the EU. This new regime will apply equally to EU and non-EU imports, with a proportionate risk-based and technologically advanced approach to SPS controls. The BTOM confirmed that SPS checks on imports will be introduced from April 2024 for EU goods. Additional BCP capacity may be required for some commodities over time. This instrument will clarify the tests that need to be met to locate a BCP away from the immediate vicinity of the point of entry into England and will therefore provide more certainty to organisations if they decide to apply to the competent authority for a site to be designated a BCP. It provides flexibility to meet any extra demand for capacity to carry out SPS checks from April 2024.

### *Explanations*

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

- 7.2 Following the UK's exit from the European Union (EU) directly applicable EU legislation was brought into domestic law as what is now assimilated law. These pieces of legislation set out the criteria that must be met before an inland BCP can be designated to legally operate if it is not located in the immediate vicinity of the point of entry into Great Britain. This legislation was originally adopted to deliver border controls for goods entering the EU. The BTOM published in August 2023 outlined a new approach for goods imported into Great Britain. This will create a streamlined system for physical checks for Sanitary and Phytosanitary (SPS) goods entering Great Britain, including those entering England, from the EU. This will allow checks on live animals, animal products, high risk food and feed of non-animal origin, and plants/plant products entering from the EU.
- 7.3 Article 64(1) of the Official Controls Regulation (OCR) requires BCPs to be located in the immediate vicinity of the point of entry into Great Britain to ensure effective biosecurity controls are carried out as soon as possible. The legislation allows for BCPs to be located away from the point of entry if specific geographical constraints prevent checks being carried out when the goods arrive in Great Britain (Article 64(2) of the Official Controls Regulation (OCR)) with these constraints being defined in Article 3(2) of Commission Delegated Regulation 2019/1012. There is also a legal requirement for such BCPs to be located no further than required to overcome geographical constraints as set out in Article 3(3)(a) of Commission Delegated Regulation 2019/1012.

#### Why is it being changed?

- 7.4 The instrument introduces new requirements for the competent authority to assess before deciding whether to designate a site a BCP that is not in the immediate vicinity of the point of entry into England. This will provide two new tests that if met will allow the competent authority to designate an inland site a BCP: the nature and volume of official controls and other official activities required at the BCP make

siting in the immediate vicinity of the point of entry inefficient; and a BCP built in the immediate vicinity of the port of entry would lead to an unacceptable adverse impact on natural resources, visual amenity or other natural amenity in the surrounding area. This is being introduced because the current legislation is too narrow and did not sufficiently take these geographical issues into account. This is particularly important in relation to English Channel ports which may lack suitable land for a BCP to carry out SPS checks, particularly on live animals.

- 7.5 The instrument extends the definition of geographical constraints (now Article 3(2A)) to include new physical/human geographical constraints. For example, the built environment around the point of entry. This will ensure that if the built environment around a point of entry would have an adverse impact on the operation of a BCP in the immediate vicinity of the point of entry this can be a reason to relocate it further inland. Geographical constraints are also applied to circumstances where checks are required to take place away from the first station stop if imported via rail. This will ensure that BCPs carrying out checks on goods imported via rail may be sited away from the immediate vicinity of the point of entry, if appropriate, for the same reasons as goods imported via other modes of transport.
- 7.6 To manage potential biosecurity and food safety risks that may arise from the location of the BCP, the instrument requires the competent authority that assesses applications to designate new BCPs must be satisfied that appropriate measures will be put in place by the person responsible for operating the BCP, to reduce any risk that might arise (Article 3(3)). This will ensure that the competent authority will not be able to approve the application if it assesses that an unacceptable biosecurity/food safety risk will be created as a result of the location. A new Article 3(5) also introduces issues that the competent authority must have regard to when assessing the potential risks arising from the siting of the BCP away from the immediate vicinity of the port of entry into England. This will ensure that the competent authority can only approve an inland BCP application if it has considered assessments relating to biosecurity risk, economic impact, impact on the local area, the likely efficiency of the BCP and any other considerations it deems necessary.

What will it now do?

- 7.7 This instrument will create more certainty for organisations regarding when a BCP may be located other than in the immediate vicinity of the point of entry into England for SPS controls for imports into England following their introduction from April 2024. It will also provide an obligation on the competent authority to only approve an application to designate a site a BCP if potential biosecurity and food safety risks will be appropriately managed.
- 7.8 The amendments to Article 3(2) of the 2019 Regulation will enable the clearer identification of the considerations which are relevant to determining whether a “geographical constraint” is such as to prevent or restrict the efficient performance of official controls and other official activities. The new Article 3(2A) clarifies and, in some cases, expands upon the categories of what may be considered “geographical constraints” for these purposes. For example, point (e) in Article 3(2A) clarifies that the border control point may be located other than in the immediate vicinity of the first station stop where animals and goods enter Great Britain by rail transport, where this is necessitated by one or more of the geographical constraints in points (a), (b), (c), (f) or (g). Moreover, point (f) clarifies that there may be considered to be no

suitable land in the immediate vicinity of the point of entry on which to locate a border control post, where there is no such land reasonably available for this purpose.

- 7.9 Point (g) adds a new category of geographical constraint, to ensure that a border control post may be located other than in the immediate vicinity of the point of entry where this is necessary to conserve or protect the visual or natural amenity, environment, ecology or local character of the area (for example, because official controls cannot be efficiently performed at the point of entry without leading to an unacceptable rise in noise or air pollution). The conditions in Article 3(3) of the 2019 Regulation, which must be met for the derogation from Article 64(1) of the Official Controls Regulation to be applied are amended. Specifically, Article 3(3)(a) of the 2019 Regulation required that the distance of the border control post from the point of entry was commensurate to the need to overcome the constraints of geography, and that it did not go beyond that need; this is replaced with a requirement that the competent authority must be satisfied that the person who will be responsible for operating the border control post will put in place adequate measures to manage any risk to human, animal or plant health or (where relevant) to the environment, arising from the location of the border control post. This reflects a proportionate, risk-based approach to the siting of border control posts which cannot be situated in the immediate vicinity of a point of entry. Further, Article 3(3)(b) of the 2019 Regulation, which required the border control post and the point of entry to be under the competence of the same customs authority is removed as it is no longer required, since all points of entry and border control posts to which the Regulations apply will necessarily be under the competence of the same customs authority.
- 7.10 The new Article 3(5) lists the considerations that the competent authority must have regard to when deciding whether to designate a border control post pursuant to the derogation in paragraph 1. Under this provision, the distance of the border control post from the point of entry is a relevant factor to which the competent authority must have regard, but it is not the only factor.

## **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 Article 144(7) of Regulation (EU) 2017/625 (“the Official Controls Regulation”) requires the appropriate authority, in this case the Secretary of State for Environment, Food and Rural Affairs, to consult such bodies or persons that appear to the authority to be representative of the interests that are likely to be substantially affected by the regulation.
- 10.2 A stakeholder engagement exercise was undertaken in September 2023, summarising the changes to be made by this instrument and inviting comments on the impact of these changes. It was targeted at the Food Standards Agency (FSA), Animal and Plant Health Authority (APHA), Port Health Authorities (PHAs), commercial ports with an interest in inland BCPs and local authorities.

10.3 At the close of consultation, Defra had received 14 responses. The responses covered issues such as the impact on biosecurity, trade flows and the commercial viability of existing ports if inland BCP were located nearby.

10.4 A further consultation was undertaken in November 2023 when the draft SI was circulated to those that had received the consultation document plus several trade associations. The responses were similar to the first consultation.

## **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:  
[www.gov.uk/import-goods-into-uk](http://www.gov.uk/import-goods-into-uk)

## **12. Impact**

12.1 There is no, or no significant, impact on business, charities or voluntary bodies. The changes proposed in this instrument change the tests that need to be met to allow for a BCP to be away from the immediate vicinity of the port of entry. The only requirement introduced is on the competent authority that assesses BCP designation applications to assess the biosecurity risk that may arise and to only approve designation if these risks will be adequately addressed.

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 introduce requirements on businesses.

## **13. Regulating small business**

13.1 This instrument does not introduce any requirements on small businesses.

## **14. Monitoring & review**

14.1 The approach to monitoring of this legislation is that these measures will be kept under review.

## **15. Contact**

15.1 Dale Cambridge-Sharpe, Policy Advisor, Border Infrastructure, Biosecurity, Borders and Trade Directorate, at the Department for Environment, Food and Rural Affairs ([dale.cambridge-sharpe@defra.gov.uk](mailto:dale.cambridge-sharpe@defra.gov.uk)) can be contacted with any queries regarding this instrument.

15.2 Spencer Draper, Project Director, Border Infrastructure, Biosecurity, Borders and Trade Directorate, at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Douglas-Miller, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.