

EXPLANATORY MEMORANDUM TO
THE OFFICIAL CONTROLS (MISCELLANEOUS AMENDMENTS)
REGULATIONS 2024

2024 No. 541

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. Declaration

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

2.2 Deborah Wells and Fiona James, Deputy Directors for SPS & Imports Policy, Animal and Plant Health and Welfare Directorate, at the Department for Environment, Food and Rural Affairs confirm that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Santosh Chana at the Department for Environment, Food and Rural Affairs, email: santosh.chana@defra.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The purpose of this instrument is to implement the second milestone of the Border Target Operating Model¹ (“BTOM”) from 30 April 2024, introducing a new global risk-based import regime for goods from both the European Union (“EU”) (as well as Switzerland, Norway, Iceland, Liechtenstein, Faroe Islands) and the rest of the world (“RoW”), to protect biosecurity and support trade between Great Britain (“GB”) and third countries. The changes made by this instrument relate to controls on imports to England, Wales and Scotland for the set of commodities known collectively as sanitary and phytosanitary (“SPS”) goods.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument is England, Wales and Scotland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales and Scotland, apart from Regulation 13 which

¹ [The Border Target Operating Model: August 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/the-border-target-operating-model-august-2023)

applies to England-only, Regulation 16 which applies to Scotland-only, and Regulation 14 and 15 which apply to Wales-only.

5. Policy Context

What is being done and why?

- 5.1 To protect our biosecurity and public health and taking into account our World Trade Organization obligations, we are moving to a global, risk-based approach for SPS controls on imports across our trading partners. We are implementing a phased introduction of SPS controls on imports from EEA countries, the Faroe Islands, Greenland and Switzerland in respect of animals, animal products and high-risk food of non-animal origin; and EU Member States, Switzerland and Liechtenstein for plants and plant products (“relevant countries”); in addition to reforming the current SPS control regime for imports from the RoW. This targets activity at higher risk consignments while simplifying processes where it is safe to do so, in order to facilitate trade. The BTOM is being implemented through a phased approach, enabled by a series of legislative changes ahead of the published milestones.
- 5.2 On 31 January 2024, The Official Controls (Extension of Transitional Periods) (Miscellaneous Amendments) Regulations 2024² (S.I. 2024/20) introduced further health certification requirements on imports of medium risk animal products, plants, plant products and high-risk food and feed of non-animal origin from relevant countries and removed pre-notification requirements for low-risk plant and plant products from such countries.
- 5.3 This instrument makes the further necessary changes to SPS controls on imports from all countries, including the countries outlined in paragraph 5.1, into GB from 30 April 2024. It introduces a new global risk-based approach to imports of germinal products, products of animal origin, animal by-products, plants and plant products by categorising them as high, medium or low/negligible risk, with controls appropriately weighted against the risks posed both by the commodity and the country of origin. With regard to provisions which apply in the devolved administrations, the Scottish and Welsh Governments have been consulted and are content with these changes.
- 5.4 Regulation 4 amends Annex 6 to Regulation (EU) 2017/625 (“the Official Controls Regulation”) to require that certain medium and high-risk goods from relevant countries must come through a point of entry with a relevant Border Control Post (“BCP”), unless such goods arrive in GB from the Republic of Ireland (excluding live animals), in which case they may enter via a listed West Coast Port or (for goods other than plants and plant products) through any point of entry in Wales. Once the goods arrive, identity and physical checks may be carried out on a risk and random basis. Live animals and goods exempted from Article 47(1) may enter GB through any point of entry.
- 5.5 Regulation 4 also amends the Official Controls Regulation to temporarily provide competent authorities at BCPs greater discretion in relation to enforcement actions available following the identification of a minor and technical regulatory non-compliance in respect of imports from relevant countries. In exercising discretion, competent authorities should consider whether the non-compliance would pose a risk to human, animal or plant health, or to the environment.

² [The Official Controls \(Extension of Transitional Periods\) \(Miscellaneous Amendments\) Regulations 2024 \(legislation.gov.uk\)](https://legislation.gov.uk)

- 5.6 Regulation 5 introduces a temporary easement (three months from 30 April 2024) applicable to relevant countries to allow a scanned copy of an original Export Health Certificate (“EHC”) or Phytosanitary Certificate (“PC”) to be provided in an importer’s prenotification. Where a scanned copy is uploaded, the original EHC or PC must be provided to the competent authority of the border control post within 5 or 3 business days respectively of the consignment’s arrival in GB. This easement only applies to imports of goods from relevant countries subject to transitional arrangements as detailed in Annex 6 of the OCR. This time-limited measure incentivises relevant exporters to take up fully digitised certification as systematic import controls are introduced, while safeguarding biosecurity with an obligation for the paper original to be provided within 5 working days for an EHC and 3 working days for a PC.

Plant Health

- 5.7 Regulation 6 amends the Official Controls and Phytosanitary Conditions (Amendment) Regulations 2021 (“S.I. 2021/136”) to move physical and identity checks of EU goods to BCPs and Control Points (“CPs”). That means that plant health import checks of EU regulated plants and plant products must be performed at designated BCPs or CPs once the Place of Destination scheme comes to an end. Trade will have to present their goods for inspection at the border accordingly before they are able to move their goods to destination.
- 5.8 Regulation 7 of, and Schedule 1 to this instrument makes amendments to Regulation (EU) 2019/2072 (“the Phytosanitary Conditions Regulation”) to re-categorise certain plants and plant products according to the risk they pose to GB biosecurity, on the basis of technical assessments. Consequently, the regulatory status of some goods will be updated. This change will remove import controls on certain goods where they are judged to not be proportionate to the risk, increasing the number of commodities which do not require a phytosanitary certificate, and are not subject to any import checks. Other commodities will be subject to reduced or enhanced import checks.
- 5.9 Regulations 8 and 9 make parallel changes to Annex 8 to the Official Controls Regulation and the Plant Health (Amendment etc.) (EU Exit) Regulations 2020 (“S.I. 2020/1482”) respectively to alter the list of certain fruit and vegetables exempt from requiring a phytosanitary certificate and pre-notification when being imported from certain countries, including the EU, Liechtenstein and Switzerland.

Miscellaneous amendments relating to products of animal origin and animal by-products

- 5.10 Regulation 10 and Schedule 2 provide for a partial exemption of certain goods from risk-assessed countries presenting a low or no specific risk from routine official controls under Article 47(1) of the Official Controls Regulation subject to certain conditions. Such low risk goods will be required to enter through a point of entry which has a border control post designated for those goods, and intelligence-based checks on such goods may be carried out. The categories of low-risk goods subject to this provision are listed in Schedule 2.
- 5.11 Regulation 11 amends Commission Implementing Regulation 2019/2007 to make consequential provision in respect of the low risk goods outlined in paragraph 5.10 to ensure they fall outside of this Regulation.
- 5.12 Regulation 12 amends Commission Implementing Regulation (EU) 2019/2129 to enable the amendment of frequency rates for identity and physical checks on certain risk-assessed RoW medium risk products of animal origin and animal by-products and

before the rates to be published online. These rates may be amended from time to time, taking into account the new risk categorisation model applicable to imports into GB from third countries.

- 5.13 Regulations 13, 14, 15, and 16 of this instrument make several consequential amendments to the Trade in Animals and Related Products Regulations (“TARP”) in England (“S.I. 2011/1197”), Scotland (“S.S.I. 2012/177”) and Wales (“S.I. 2011/2379” (W.252)), which provide for the enforcement and implementation of the Official Controls Regulation in relation to products of animal origin and animal by-products. Schedule 5 to the respective versions of these Regulations provide for transitional modifications applicable to relevant countries and are supplemental to the transitional arrangements set out in Annex 6 to the Official Controls Regulation, establishing the procedure for importation, including documentary and pre-notification requirements, and adding the requirement to entering via a points of entry with a designated BCP approved for the commodity being imported. Amendments are being made to Schedule 3 to each TARP in consequence of the low risk goods provisions being made by regulation 10 to ensure they are excluded from the application of Part 3.

What was the previous policy, how is this different?

- 5.14 The current approach reflects the position that has been in place following the UK’s withdrawal from the European Union created through assimilated law and transitional arrangements applying to relevant countries under Annex 6 to the Official Controls Regulation (“the TSP”). There are currently different levels of controls and checks on imports from relevant countries and imports from RoW, as part of the TSP. Under this instrument, official controls will increase on relevant goods under the TSP at border control posts in GB (and will continue at destination for live animals). From 30 April 2024, only the highest risk products of animal origin, live animals, high risk food of non-animal origin and plants and plant products (“P&PP”) from relevant countries will undergo risk-based physical inspections, with low risk goods from both relevant countries and RoW subject to only intelligence-based checks. The frequency rates for official controls on certain RoW imports of animal products will also be amended under changes being brought in by this instrument, which will allow frequency rates to be published online and amended from time to time.
- 5.15 The new approach under this instrument makes a further step toward a long-term solution to managing biosecurity risks from EU and RoW as set out in the BTOM.

6. Legislative and Legal Context

How has the law changed?

- 6.1 The principal legislation governing the controls required on movement into GB of animals, animal products, food, feed and plants is set out in assimilated law, namely Regulation (EU) 2016/2031 (“the Plant Health Regulation”) for plant health and the Official Controls Regulation for animal, plant and public health, and the additional legislation made under these Regulations.
- 6.2 Under powers conferred by the European Union (Withdrawal) Act 2018, this legislation was amended where necessary, in order to address failures in assimilated law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom (“UK”) from the EU.
- 6.3 Annex 6 also provides easements from the full regime of official controls applicable under the Official Controls Regulation to live animals, plants and plant products,

products of animal origin, certain animal by products and high risk-food of non-animal origin from relevant countries during the transitional period and exempts certain goods from the island of Ireland from the requirement to pre-notify their importation.

- 6.4 The Trade in Animals and Related Products Regulations (“TARP”) in England (S.I. 2011/1197), Wales (S.I. 2011/2379 (W.252)) and Scotland (S.S.I. 2012/177) further implements and enforces the Official Controls Regulation in respect of animals and animal products, giving effect to law concerning the importation into GB of animals and animal products, including the veterinary checks regime and imports conditions for live animals and animal products imported from countries other than the UK, the Channel Islands and the Isle of Man.

Why was this approach taken to change the law?

- 6.5 Legislative change is required to deliver the BTOM for both relevant countries and RoW countries, therefore, this is the only possible approach to make the necessary changes to SPS controls on imports from all countries, including the EU, into GB.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 A period of engagement on the draft BTOM ran from 5 April 2023 for 6 weeks. The feedback from this engagement was collated, considered and where appropriate, adopted for the final BTOM publication on 29 August 2023.
- 7.2 A further targeted stakeholder engagement exercise was undertaken over a 12 day period over March – April 2024, providing a summary of the changes to be made by this instrument and inviting views on the proposed amendments. This engagement was targeted at over 50 key stakeholders in the SPS sector, including representative trade and industry organisations, interest groups and Port Health Authorities. Organisations and individuals from these groups were asked for feedback on the proposed legislative changes.
- 7.3 Eight responses were received in response to this engagement, with two responses relating to the extension of the TSP, which since the engagement period, has been legislated for in a separate instrument.
- 7.4 Stakeholders’ comments were focused on seeking clarity on the implementation of the SI, for example, on how the regime will be enforced from 30 April 2024. Detail on check rates for commodities assessed as medium-risk under the BTOM will be published on gov.uk, and details of the Common User Charge at Sevington, about which information was also requested, have now been published. No objections were raised to the principle of proceeding with this SI, which is integral to protecting our biosecurity and delivering the policy design described in the published BTOM
- 7.5 Separate stakeholder engagement was held for six weeks from January 2024 on the proposal to re-categorise certain plants and plant products according to the risk they pose to GB biosecurity. This engagement was published on the Plant Health Portal and circulated to stakeholders in the Plant Health Advisory Forum. Four responses were received from stakeholders. A full summary of these responses and the Government’s response to these has been published on gov.uk³.

³ <https://planthealthportal.defra.gov.uk/assets/Annex-11-response-letter-final.pdf>

7.6 The devolved administrations in Scotland and Wales have been consulted about the proposed amendments and are content, noting the importance of maintaining a consistent approach to SPS controls in GB.

8. Applicable Guidance

8.1 The BTOM lists the relevant provisions and their respective milestones, alongside risk categorisation tables for imported commodities. These are published on gov.uk. Summary tables for check rates will also be published online on www.gov.uk as provided for by the regulations.

8.2 A series of information leaflets⁴ for businesses have been published to help businesses prepare for a new approach to importing goods to GB under the BTOM.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website. The Regulatory Policy Committee (“RPC”) has reviewed an earlier iteration of this Impact Assessment, and changes have been made in response to their comments. A final opinion from the RPC is expected in May.

Impact on businesses, charities and voluntary bodies

9.2 The impact on business, charities and voluntary bodies is additional costs on importing SPS goods. All businesses, charities and voluntary bodies importing goods from the EU and certain other countries will now need to comply with certain import requirements which applied to all existing third countries.

9.3 The legislation does impact small or micro businesses.

9.4 No specific action is proposed to exempt regulatory burdens on small or micro businesses. The basis for this is that amendments apply equally to all businesses importing animal and plant goods. There is no exemption for small or micro businesses, given the importance of protecting biosecurity through the actions of all businesses, regardless of their size.

9.5 The impact on the public sector will relate to delivery of SPS controls, i.e., increased or changed activity for Port Health Authorities (PHAs). However, PHAs will deliver the import controls regime under a cost recovery model so the net effect on the public sector will be small.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is to develop a performance management framework once the BTOM is fully operational.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Lord Douglas-Miller has made the following statement:

⁴ <https://www.gov.uk/government/publications/border-target-operating-model-information-leaflets-for-businesses>

- 10.3 “A statutory review clause is not required as the majority of the measures in this instrument are transitional or transitory, and it is proposed to make further legislative changes within the calendar year to enact the next milestone of the Border Target Operating Model establishing the long-term import controls regime. Additionally, the measures in regulations 4, 7, 8, and 9 will be kept under review following any new or revised risk assessments, pest interceptions, changes in pest distributions and other developments.”

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 There are some matters which the Joint Committee on Statutory Instruments may have interest.
- 11.2 This instrument will be laid on 22 April 2024 and will come into force on 30 April, breaching the 21-day convention. The introduction of this SI has been delayed due to several factors. These include the complex nature of the policy and operational issues, including the impact on internal trade within the UK, and subsequent complexity of the legal drafting required. Due to the intricate nature of the policy, checks across Government had to be thorough and diligent and therefore took longer than anticipated. This, in turn, impacted on the timetable for engaging with stakeholders, finalising the instrument, and initiating and completing the consent process with the Devolved Administrations.
- 11.3 Whilst Defra acknowledge that breaching the 21-day convention does not provide stakeholders the usual time period to consider the instrument before it comes into force, Defra carried out an intensive programme of engagement and communications to ensure trader preparedness for the 30 April 2024 milestone following the publication of the final BTOM on 29 August 2023. This included monthly, sector focused webinars, recorded and hosted on YouTube; digestible content leaflets on gov.uk to support traders in preparing and EU focused activity and translations to ensure whole supply chain readiness.
- 11.4 Implementing this instrument by 30 April is essential to deliver key commitments made in the final BTOM including the removal of the requirement for health certification and routine checks for low risk animal products, plants and plant products from rest of the world and reduction in physical and identity checks on medium risk animal products from Rest of World countries. Whilst breaking the 21-day rule is regrettable, it is necessary on this occasion to implement these changes which traders, enforcement bodies and others have all been preparing for. Not doing so would cause significant disruption for businesses who have been preparing for the changes and would likely disrupt trade and potentially our food supply chains. Importantly, the risk posed by animal and plant pests and diseases to our public health, our food and farming industries and to our natural environment, increases the longer we do not have controls on SPS imports from the EU.

12. European Convention on Human Rights

- 12.1 Lord Douglas-Miller, Parliamentary Under Secretary of State has made the following statement regarding Human Rights:
- “In my view the provisions of The Official Controls (Miscellaneous Amendments) Regulations 2024 are compatible with the Convention rights.”

13. The Relevant European Union Acts

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”). It does however relate to the withdrawal of the United Kingdom from the European Union because it implements the next milestone of the new global risk-based import regime for SPS goods, including from the EU.