

## POLICY NOTE

### THE OFFICIAL CONTROLS (TRANSITIONAL STAGING PERIOD) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) (NO. 3) REGULATIONS 2021

SSI 2021/493

The above instrument is made in exercise of the powers conferred by Article 144(6) of, and paragraph 2 of Annex 6 to, Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products<sup>(1)</sup>, paragraph 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018<sup>(2)</sup> and of all other powers enabling them to do so.

The instrument is subject to negative procedure.

#### **Purpose of the instrument**

To make amendments to the end date of the transitional staging period and in respect of notification requirements to come into force for 1 January 2022.

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 with a single date – 30 June 2022 – so that the Official Controls Regulation will apply to all SPS goods starting from 1 July 2022. Further legislation is planned in early 2022 to set out specific requirements applying from 1 July 2022.

The instrument extends from 1 January 2021 to the end of the transitional staging period transitional provision on requirements for phytosanitary certificates in regulation 52 of the Plant Health (Amendment etc.) (EU Exit) Regulations 2020<sup>(3)</sup>.

#### **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. Provision was made for the end date of the transitional staging period 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.

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

---

(1) EUR 2017/625. Article 144 was substituted, and Annex 6 inserted, by S.I. 2020/1481. The Scottish Ministers are the appropriate authority in relation to Scotland by virtue of Article 3(2A)(c).

(2) 2018 c. 16; paragraph 21 of schedule 7 was amended by paragraph 53 of schedule 5 of the European Union (Withdrawal Agreement) Act 2020.

(3) S.I. 2020/1482.

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(4), the Official Controls (Extension of Transitional Periods) Regulations 2021(5), the Animal Health, Plant Health, Seeds and Seed Potatoes (Miscellaneous Amendments) Regulations 2021(6), the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2021(7), the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No. 2) Regulations 2021(8) and the Animal Products (Transitional Import Conditions) (Miscellaneous Amendment) (Scotland) Regulations 2021(9).

On 14 September 2021, the UK Government announced its decision to revise the current timetable for the introduction of all remaining checks. Without this instrument, from 28 February 2022, businesses in GB importing animals, POAO, ABP and plants, plant products and other objects from the EU and EU businesses exporting to GB will be obliged to comply with documentary, physical and identity checks at Border Control Posts. Additionally, documentary checks and phytosanitary certificates would be required for all regulated plants and plant products from 1 January 2022.

This instrument therefore enables the continued functioning of SPS controls between the EU and Scotland and the EU following the end of the transitional staging period. **The end of the transitional staging period is amended to 30 June 2022, after which Official Controls Regulation checks will apply to SPS goods entering GB from the EU.**

Requirements for the pre-notification of the import of ABP not currently subject to pre-notification requirements are introduced from 1 January 2022, and provision is made 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 are not subject to pre-notification requirements which apply from 1 January 2022.

## **Explanation of the law being amended by the regulations**

The law being amended by the regulations is:

- Regulation 2 of the Official Controls (Extension of Transitional Periods) Regulations 2021 which appoints the end date of the “transitional staging period” in paragraph 2 of Annex 6 to Regulation (EU) 2017/265 as the 31 December 2021 in respect of documentary checks for plants, plant products and other objects, and 28 February 2022 in all other cases.
- Paragraph 4 of schedule 5 of the Trade in Animals and Related Products (Scotland) Regulations 2012, which makes provision derogating from the provisions of Part 3 of those Regulations (which apply in relation to the importation into Scotland from a third country of animals or products subject to official controls at border control posts),

---

(4) S.I. 2021/429.

(5) S.I. 2021/809.

(6) S.I. 2021/1229.

(7) S.S.I. 2021/297.

(8) S.S.I. 2021/342.

(9) S.S.I. 2021/432.

requiring instead the prior notification of the import of animals and certain animal products.

- Paragraph 13 of Annex 6 to Regulation (EU) 2017/625 which creates requirements for the prior notification of entry to Great Britain for certain goods from certain third countries to apply from 1 January 2022.
- Regulation 52 of the Plant Health (Amendment etc.) (EU Exit) Regulations 2020, makes transitional provision dis-applying requirements for phytosanitary certificates for certain plants, plant products and other objects introduced into Great Britain until 1 January 2022.

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

These Regulations will provide for official controls on imports currently scheduled to come into force in January and March 2022, to be introduced from 1 July 2022.

### **Statements required by European Union (Withdrawal) Act 2018**

The Regulations are made in exercise of powers conferred by Article 144(6) of, and paragraph 2 of Annex 6 to, Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products. In relation to regulations 3 to 5 of the Regulations, they are also made in exercise of the powers in 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. The statements below relate to regulations 3 to 5 in so far as they are made under 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 2021 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 sanitary and phytosanitary checks on animals, animal products, plants, plant products and other objects during 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 necessary 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) (No. 3) Regulations 2021 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) (No. 3) Regulations 2021 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) (No. 3) Regulations 2021 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) (No. 3) Regulations 2021 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 make relatively minor amendments to transitional arrangements.

## **Statement setting out the Scottish Ministers' reasons for their choice of procedure**

Negative procedure is considered appropriate as regulations 3 to 5 make amendments to transitional arrangements. It is also considered appropriate because the powers under Article 144(6) of, and paragraph 2 of Annex 6 to, Regulation (EU) 2017/625 to make provision incidental and supplementary to appointing the end date of the transitional staging period (and which the powers under the European Union (Withdrawal) Act 2018 are being exercised together with) are subject to negative procedure. Regulations 3 to 5 do not include provisions which fall within paragraph 1(2) of schedule 7 of the European Union (Withdrawal) Act 2018.

## **Consultation**

Under the enabling powers for this SSI, consultation is required before making new Regulations. Defra undertook a consultation exercise in December 2021 on behalf of Scottish Ministers, 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. 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

21 December 2021