

EXPLANATORY MEMORANDUM TO
THE OFFICIAL CONTROLS (ANIMALS, FEED AND FOOD, PLANT HEALTH
ETC.) (AMENDMENT) (EU EXIT) (NO. 2) REGULATIONS 2020

2020 No. 1631

1. Introduction

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

2. Purpose of the Instrument

- 2.1 The purpose of this instrument is to make further amendments to existing EU retained Regulations governing official controls on imports to Great Britain of animals and animal products, plants and plant products, including food and other imports relevant to the agri-food chain – collectively known as sanitary and phyto-sanitary (“SPS”) checks.
- 2.2 Official controls are performed at appropriately designated border control points and other points of entry, and may also be carried out at other locations, such as slaughterhouses, to verify the compliance of imported SPS goods with Official Controls Regulations (“OCR”). These controls are integral to the protection of human health and biosecurity in the UK, as they deliver a risk-based and closely defined regime for checking the provenance, health and lack of contamination of SPS goods before they are allowed to pass beyond the control points at the UK border.
- 2.3 This instrument completes the full set of official controls amendments required for full SPS operability after the end of the Transition Period. The main overarching regulatory control amendments are set out in the Official Controls (Animals, Feed and Food, Plant Health Etc.) (Amendment) (EU Exit) Regulations 2020, due to come into force at 11:00 p.m. on 31 December 2020.
- 2.4 As with the first Instrument, this further Instrument also rectifies legal deficiencies arising from the withdrawal of the United Kingdom from the European Union which, if not amended, would prevent our existing, established and harmonised system of official controls on SPS imports from being able to operate after the end of the Transition Period. For example, references in retained EU Official Controls Regulations to legislative functions of the European Commission, are amended to be exercisable instead by the Defra Secretary of State or the appropriate authority of the UK Devolved Administrations. These are termed ‘operability amendments’.

Explanations

What did any relevant EU law do before exit day?

- 2.5 The retained EU Regulations being amended by this instrument (together with the preceding Instrument) set out a comprehensive and consistent risk-based regime of official controls on imports of SPS import goods, simplifying and harmonising controls across the entire agri-food chain. OCR supports EU and UK biosecurity, helping to prevent the spread of animal and plant diseases, uphold the humane treatment of animals, and raise standards of food safety and consumer protection.

Why is it being changed?

- 2.6 The changes are necessary to ensure the full set of retained EU Official Controls Regulations operate effectively immediately after the end of the Transition Period which implements withdrawal of the United Kingdom from the European Union.

What will it now do?

- 2.7 The deficiency amendments set out in this instrument will allow EU-derived domestic OCR legislation and direct retained EU Regulations to continue to be fully operable, after the end of the Transition Period. This instrument will allow the UK to continue to deliver controls and checks on all imports subject to SPS checks which vary proportionately, depending on the specific risk factors of the commodity itself and of the country of export (so for example, whether the import is of live animals, products of animal origin or plant material; or whether it is being exported from a country with any current known incidences of relevant animal or plant diseases).
- 2.8 This instrument does not apply to the Northern Ireland Protocol.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument includes Scotland and Wales.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement regarding Human Rights:

“In my view the provisions of the Official Controls (Animals, Feed and Food, Plant Health Etc.) (Amendment) (EU Exit) (No.2) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument ensures that a functioning system of official controls is retained in UK law and is in force at the end of the Transition Period, by making operability amendments under the EU (Withdrawal) Act 2018 (“the Withdrawal Act”) to retained EU-derived domestic legislation on official controls.
- 6.2 Annex 2 sets out the tertiary regulations amended under this instrument, other EU Exit Regulations amended, and regulations revoked.

7. Policy background

What is being done and why?

- 7.1 This instrument does not introduce changes to SPS imports control policy. It will maintain existing delivery of a robust import controls mechanism for all SPS imports to the UK, whilst maintaining or improving biosecurity and welfare standards.
- 7.2 As noted at (2.3) above, this instrument completes the body of retained EU official controls amendments, which have been amended in part in the Official Controls (Animals, Feed and Food, Plant Health Etc.) (Amendment) (EU Exit) Regulations 2020, due to come into force at 11:00 p.m. on 31 December 2020.
- 7.3 This earlier Instrument amended the substantive body of OCR regulations which define what official controls are, how they operate, and how they are evaluated and audited, as set out in Regulation (EU) 2017/625.
- 7.4 This first OCR Instrument was one of five cited by the European Commission as critical to their decision on whether to list GB as a third country for the purposes of export into the Union. The Commission required these key Instruments to be laid by no later than 02 November 2020 and to be made and published by no later than 09 December 2020, allowing the EU Standing Committee on Plants, Animals, Food and Feed time to consider the published legislation before meeting later in December to decide on GB listing status.
- 7.5 Given the restrictive timetable set by the Commission for laying and publication of these listing-critical instruments, it was simply not possible to resolve all technical operability queries and secure DA clearance for the substantive set of over thirty tertiary regulations originally intended to be amended within that first Instrument. A policy decision was therefore taken to expedite laying of the first Instrument, and separately draft, clear and lay this second OCR Instrument to amend all tertiary regulations as required to deliver the full set of OCR operability amendments.
- 7.6 PBL have consented to have this instrument handled, by exception, as a made affirmative – enabling it to be in force alongside the first OCR Instrument from 31 December 2020, and to be debated in January 2021.
- 7.7 The general operability amendments in this instrument fall into the following broad categories:
- Maintaining the same controls structure, definitions, powers and processes currently in force for UK (and EU) border controls for all SPS goods;
 - Repealing certain specific functions carried out by the Commission for which there is no current GB equivalent (for example, revoking EU Regulation 2019/723 which sets out the standard model form to be used in the annual reports submitted to the Commission by Member States);
 - Replacing references to the Commission, Member States and EU-specific functions, which will be non-functional in UK law after the end of the Transition Period: for example, references to ‘the Commission’ as the overarching authority (in EU Regulations) are amended to ‘appropriate authority’ or ‘competent authority’ (in UK law or non-legislative functions); and
 - Enabling OCR powers in UK law to be exercised either by the Secretary of State, or by the appropriate Devolved Administration (depending on whether the relevant functions are reserved or devolved in existing UK law), and also to

permit devolved powers to be exercised by the Secretary of State with the consent of the Devolved Administrations. This is necessary as OCR covers a complex legislative landscape, where reserved and devolved functions are closely interlinked in practice.

- 7.8 This instrument refers to the transitional arrangements set out in the Official Controls (Animals, Feed and Food, Plant Health Etc.) (Amendment) (EU Exit) Regulations 2020, to phase in progressive controls on SPS imports from the European Union in 2021 and align these controls with those relating to SPS imports from the rest of the world.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power conferred by section 8 of the European Union (Withdrawal) Act 2018 to address failures of retained European Union law to operate effectively, or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of Annex 1 to this Explanatory Memorandum.

9. Consolidation

- 9.1 None: however, this instrument makes operability amendments to a number of previously made EU Exit SIs, which are listed in Annex 2.

10. Consultation outcome

- 10.1 None: no consultation was undertaken by Defra, as this instrument does not deliver policy changes, but maintains the existing imports controls regime and processes. Any impact on businesses or individuals arose from the earlier referendum decision to leave the EU, which had the effect of changing the OCR category of EU imports being subject to checks applicable to Member States, to checks applicable to third country imports.
- 10.2 We have engaged with Devolved Administrations throughout the drafting of this instrument, including seeking and reflecting their views on the tertiary regulation amendments it sets out. Scottish and Welsh Governments have both given their formal consent. Wider stakeholder engagement and awareness has been delivered in work within individual Defra policy animal, plant and SPS teams, on the delivery impacts of the Government's Border Operating Model which sets out how GB OCR requirements will continue to be delivered in January 2021 and thereafter.

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 There is no, or no significant, impact on business, charities or voluntary bodies, as this instrument does not set out new policy in the risk-based control of SPS imports.

12.2 There is no, or no significant, impact on the public sector, as this instrument does not set out new policy in the risk-based control of SPS imports.

12.3 An Impact Assessment has not been prepared for this instrument because the equivalent annual net direct costs to businesses, charities or voluntary bodies has been assessed at less than +/-£5million.

13. Regulating small business

13.1 This instrument applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to replicate as far as possible existing import requirements so that there is as little disruption to trade in animals and animal products as possible.

14. Monitoring & review

14.1 Following the operation of the transitional phased approach to import controls during 2021, Defra will review any necessary changes required to the Official Controls Regulation.

14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Julie Hull at the Department for Environment, Food and Rural Affairs: julie.hull@defra.gov.uk / OCRLegislation@defra.gov.uk can be contacted with any queries regarding this instrument.

15.2 Richard Moir, Deputy Director for SPS Import Delivery at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, can confirm that this Explanatory Memorandum meets the required standard.

Annex 1

Statements under the European Union (Withdrawal) Act 2018

Part 1

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), 9 and 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), 9 and 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), 9 and 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), 9 and 23(1) or jointly exercising powers in Schedule 2	<p>Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p>
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	<p>Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2</p> <p>In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs</p>	Explain the instrument, identify the relevant law before exit 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), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and 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 4 or 14, Schedule 7.	Statement of the reasons for the Minister’s opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit 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 exit day, and explaining the instrument’s effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 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.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

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

“In my view the Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) (No. 2) Regulations 2020 does no more than is appropriate”.

- 1.2 This is the case because it relates to maintenance of existing regulatory standards and for the justifications set out at paragraph 7.1 of this Explanatory Memorandum.

2. Good reasons

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

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 2.2 These are the reasons set out at paragraph 7.1 of this Explanatory Memorandum.

3. Equalities

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

“The Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) (No. 2) Regulations 2020 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.”

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

“In relation to the Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) (No. 2) Regulations 2020, I, Lord Gardiner of Kimble 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.”

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.

5. Legislative sub-delegation

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

“In my view it is appropriate to create a relevant sub-delegated power in the Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) (No. 2) Regulations 2020.”

5.2 This is appropriate because it enables the Secretary of State to publish and amend the form of official certificates, attestations and other documents and certain lists, rather than retaining them in legislation, so that they can be amended and improved quickly in future. As the contents of the certificates and lists reflect the legislation for imports, substantive changes would still require the usual parliamentary oversight.

6. Urgency

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

“In my view by reason of urgency, it is necessary to make the Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) (No. 2) Regulations 2020, without a draft of the instrument containing the regulations being laid before, and approved by a resolution of, each House of Parliament.”

6.2 This is because of the explanations set out in sections 7.2 – 7.10 above.

Annex 2

1. Regulations revoked by the Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) (No. 2) Regulations 2020

- Commission Regulation (EC) No 1756/2004 specifying the detailed conditions for the evidence required and the criteria for the type and level of the reduction of the plant health checks of certain plants, plant products or other objects listed in Part B of Annex V to Council Directive 2000/29/EC;
- Commission Implementing Regulation (EU) 2019/723 laying down rules for the application of Regulation (EU) 2017/625 of the European Parliament and of the Council as regards the standard model form to be used in the annual reports submitted by Member States;
- Commission Implementing Decision (EU) 2020/1550 establishing the multiannual programme of controls for the period 2021-2025 to be carried out by Commission experts in the Member States to verify the application of Union agri-food chain legislation.

2. Operability amendments made in this Instrument to EU Exit Legislation

2.1 Amendment of subordinate legislation:

- The Trade in Animals and Related Products Regulations 2011
- The Veterinary Medicines Regulations 2013
- The Animal Feed (Amendment) (EU Exit) Regulations 2019
- The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) Regulations 2019
- The Aquatic Animal Health and Plant Health (Legislative Functions) (EU Exit) Regulations 2019
- The Food and Feed Hygiene and Safety (Miscellaneous Amendments etc.) (EU Exit) Regulations 2020
- The Plant Health (Amendment etc.) (EU Exit) Regulations 2020
- The Plant Health (Phytosanitary Conditions) (Amendment) (EU Exit) Regulations 2020
- The Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020
- The Import of, and Trade in, Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020

2.2 Amendment of retained direct EU legislation

- Commission Implementing Regulation (EU) 2019/66 on rules on uniform practical arrangements for the performance of official controls on plants, plant products and other objects in order to verify compliance with Union rules on protective measures against pests of plants applicable to those goods
- Commission Delegated Regulation (EU) 2019/624 concerning specific rules for the performance of official controls on the production of meat and for production and relaying areas of live bivalve molluscs in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council

- Commission Delegated Regulation (EU) 2019/625 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council with regard to requirements for the entry into the Union of consignments of certain animals and goods intended for human consumption
- Commission Implementing Regulation (EU) 2019/626 concerning lists of third countries or regions thereof authorised for the entry into the European Union of certain animals and goods intended for human consumption, amending Implementing Regulation (EU) 2016/759 as regards these lists
- Commission Implementing Regulation (EU) 2019/627 laying down uniform practical arrangements for the performance of official controls on products of animal origin intended for human consumption in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council and amending Commission Regulation (EC) No. 2074/2005 as regards official controls
- Commission Implementing Regulation (EU) 2019/628 concerning model official certificates for certain animals and goods and amending Regulation (EC) No 2074/2005 and Implementing Regulation (EU) 2016/759 as regards these model certificates
- 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
- Commission Implementing Regulation (EU) 2019/1014 to lay down detailed rules on minimum requirements for border control posts, including inspection centres, and for the format, categories and abbreviations to use for listing border control posts and control points
- Commission Delegated Regulation (EU) 2019/1081 establishing rules on specific training requirements for staff for performing certain physical checks at border controls posts
- Commission Implementing Regulation (EU) 2019/1715 laying down rules for the functioning of the information management system for official controls and its system components (“the IMSOC Regulation”)
- Commission Implementing Regulation (EU) 2019/1793 on the temporary increase of official controls and emergency measures governing the entry into the Union of certain goods from certain third countries implementing Regulations (EU) 2017/625 and (EC) No 178/2002 of the European Parliament and of the Council and repealing Commission Regulations (EC) No 669/2009, (EU) No 884/2014, (EU) 2015/175, (EU) 2017/186 and (EU) 2018/1660
- Commission Delegated Regulation (EU) 2019/2074 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules on specific official controls on consignments of certain animals and goods originating from, and returning to the Union following a refusal of entry by a third country
- Commission Implementing Decision (EU) 2019/2098 on temporary animal health requirements for consignments of products of animal origin for human consumption originating in and returning to the Union following a refusal of entry by a third country

- Commission Delegated Regulation (EU) 2019/2123 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for the cases where and the conditions under which identity checks and physical checks on certain goods may be performed at control points and documentary checks may be performed at distance from border control posts
- Commission Delegated Regulation (EU) 2019/2124 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for official controls of consignments of animals and goods in transit, transshipment and onward transportation through the Union, and amending Commission Regulations (EC) No 798/2008, (EC) No 1251/2008, (EC) No 119/2009, (EU) No 206/2010, (EU) No 605/2010, (EU) No 142/2011, (EU) No 28/2012, Commission Implementing Regulation (EU) 2016/759 and Commission Decision 2007/777/EC
- Commission Delegated Regulation (EU) 2019/2125 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules concerning the performance of specific official controls of wood packaging material, notification of certain consignments and measures to be taken in cases of non-compliance
- Commission Delegated Regulation (EU) 2019/2126 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for specific official controls for certain categories of animals and goods, measures to be taken following the performance of such controls and certain categories of animals and goods exempted from official controls at border control posts
- Commission Implementing Regulation (EU) 2019/2128 establishing the model official certificate and rules for issuing official certificates for goods which are delivered to vessels leaving the Union and intended for ship supply or consumption by the crew and passengers, or to NATO or a United States military base
- Commission Implementing Regulation (EU) 2020/1540 amending Implementing Regulation (EU) 2019/1793 as regards sesamum seeds originating in India
- Commission Implementing Regulation (EU) 2020/1641 regarding imports of live, chilled, frozen or processed bivalve molluscs, echinoderms, tunicates and marine gastropods for human consumption from the United States of America