

EXPLANATORY MEMORANDUM TO
THE OFFICIAL CONTROLS (TEMPORARY MEASURES) (CORONAVIRUS)
(AMENDMENT) (NO. 3) REGULATIONS 2021

2021 No. 1491

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

2. Purpose of the instrument

- 2.1 This instrument will extend legislation which allows competent authorities in Great Britain (“GB”) to maintain existing temporary measures related to official controls conducted to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products while addressing disruptions arising from the COVID-19 (“coronavirus”) pandemic. It will extend current powers allowing control authorities that carry out official controls and official activities to authorise, within strict parameters, natural persons to undertake official controls and official activities under their instruction by any available means of communication; to allow control authorities to conduct checks on electronically submitted documents, and undertake such checks away from the border; and to allow control authorities to conduct meetings with operators by using remote communication.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument, which is made on 30th December 2021, will come into force immediately before 31st December 2021, breaching the 21-day rule. The decision to extend the application of retained Commission Implementing Regulation (EU) 2020/466 (“the retained EU Regulation”) was taken at short notice in response to the emergence of the new variant of the coronavirus, “Omicron”, and the implementation of the Government’s new coronavirus public health measures to address the rising number of infections. The worsening of the pandemic in the UK and around the globe, and the new measures adopted to control it may have a direct impact on workforce resources for GB authorities responsible for delivering official controls and other official activities, as well as in exporting countries.
- 3.2 It is necessary for this instrument to come into force before 31st December 2021 to ensure that the retained EU Regulation does not expire on 31st December 2021. Delaying this instrument to comply with the 21-day rule would leave GB authorities unable to rely on easements permitted by the retained EU Regulation in the delivery of official controls and other official activities after the retained EU Regulation expires on 31st December 2021.
- 3.3 This instrument comes into force in advance of being laid before Parliament. This is because, in view of the time required over the Christmas period to obtain consent

from the Scottish Ministers and the Welsh Ministers to the making of the instrument, it was not possible to make and lay the instrument until 30th December 2021, which was after the laying office had closed until January.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, and Scotland.
- 4.2 The territorial application of this instrument is England and Wales, and Scotland.

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 This instrument will amend the retained EU Regulation, which has become retained direct EU legislation under the European Union (Withdrawal) Act 2018 (“the Act”), to extend the duration of existing easements in the system of official controls in operation in GB, beyond the existing expiry date of 31st December 2021 to 1st July 2022. The duration of those easements was previously extended by the Official Controls (Temporary Measures) (Coronavirus) (Amendment) Regulations 2021 (S.I. 2021/78) and The Official Controls (Temporary Measures) (Coronavirus) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/681), which allowed easements to continue beyond, respectively, 1st February 2021 and 1st July 2021 until 31st December 2021.

7. Policy background

What is being done and why?

- 7.1 Powers to adopt temporary measures related to official controls and official activities in GB have been in place throughout 2020 and 2021 to address disruptions to official controls arising from the coronavirus outbreak. Given the evolution of the pandemic with the emergence of the Omicron variant, and the new measures adopted by the Government to address it, disruption is likely to continue throughout the first half of 2022. This instrument is being introduced using powers in Article 141 of Regulation (EU) 2017/625, to extend the applicability of Regulation 2020/466 in GB until 1st July 2022.
- 7.2 The instrument will extend current powers allowing competent authorities to adopt new and maintain existing, temporary measures. This includes options to allow control authorities that carry out official controls and official activities to authorise, within strict parameters, natural persons to undertake official controls and official activities under their instruction by any available means of communication; to allow control authorities to carry out checks on electronically submitted documents rather than hard copies, also away from the border; and to allow control authorities to conduct meetings with operators through the use of remote technology.

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.

9. Consolidation

- 9.1 There are no plans to consolidate this legislation.

10. Consultation outcome

- 10.1 Under the enabling powers for this instrument, consultation is required before making new regulations. The Secretary of State must consult such bodies or persons as appear to the Secretary of State to be representative of the interests likely to be substantially affected by these Regulations. In order to meet these requirements, stakeholders including Port Health Authorities, the Animal and Plant Health Agency (Plant Health Inspectorate and Centre for International Trade), other plant health stakeholders, the Food Standards Agency and Food Standards Scotland were consulted.
- 10.2 This instrument was produced in consultation with Scottish and Welsh governments.

11. Guidance

- 11.1 Guidance can be found on the relevant competent authority's website.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector is low. It enables GB competent authorities to draw on temporary easements to carry out official controls and official activities during the pandemic.
- 12.3 An Impact Assessment has not been prepared because this instrument introduces only temporary measures, and has no or no significant impact on business, charities voluntary bodies. GB competent authorities were consulted on the extension of the legislation.

13. Regulating small business

- 13.1 The legislation applies equally to all sizes of importing businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses as this instrument maintains easements which minimise regulatory burdens.

14. Monitoring & review

- 14.1 This instrument will be reviewed ahead of its expiration on 1st July 2022 to determine whether it continues to be necessary, or if an extension is required. The duration of this easement will depend on the degree of disruption caused by the pandemic.
- 14.2 The policy which is adopted under this instrument will be monitored and assessed on an ongoing basis and amended if necessary.
- 14.3 This instrument does not include a statutory review clause because the duration of the EU Regulation that these Regulations amend is extended only to 1st July 2022, and because it does not impose any additional regulatory impact on business or the voluntary sector.

15. Contact

- 15.1 Johanna Asmussen at the Department for Environment, Food and Rural Affairs. Telephone: 0208 026 7073 or email: johanna.asmussen@defra.gov.uk can be contacted with any queries regarding this instrument.
- 15.2 Peter Jinks, Deputy Director for SPS and Imports, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Goldsmith, Minister of State (Minister for Pacific and the Environment), at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.