

**EXPLANATORY MEMORANDUM TO**  
**THE OFFICIAL CONTROLS (EXTENSION OF TRANSITIONAL PERIODS)**  
**REGULATIONS 2021**

**2021 No. 809**

**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.

**2. Purpose of the instrument**

2.1 The purpose of this instrument is to protect biosecurity and support trade by ensuring that within Great Britain, and between Great Britain and the ‘territory subject to special transitional import arrangements’ as defined in Annex 6 of The Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020<sup>1</sup>, effective official border controls continue to operate following the end of the Transition Period. The change made by this instrument relates to 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 Operability legislation made in late 2020, made under the European Union (Withdrawal) Act 2018 (“the EU Withdrawal Act”), set out a ‘transitional staging period’ to allow controls on EU imports to be introduced over several months, enabling trade sectors and related controls infrastructure to be ready for the increased biosecurity measures which are a consequence of our decision to leave the European Union. This instrument uses the powers included in the exit legislation to extend that transitional staging period from July 2021 to the end of February 2022.

2.3 This instrument will ensure that the phased introduction timetable of import border controls measures can be fully met, during a time in which import and export businesses and control facilities continue to be adversely affected by the unexpectedly protracted impacts of the coronavirus pandemic.

**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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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<sup>1</sup> ‘territory’ as defined in Annex 6 of 2020/1481 includes the European Union, EEA states, and other specified countries, referred to in this document as ‘the European Union’ or ‘EU’

#### **4. Extent and Territorial Application**

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

4.2 The territorial application of this instrument is England, 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 The EU Withdrawal Act 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, as well as a transitional period during which old health certificates, based on those used by the EU, could be used by any trading partner, to accompany goods entering Great Britain. Provision was also made for the end dates of those transitional periods to be changed by statutory instrument, and this instrument is made in exercise of those powers, which include:

- 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 ("the Official Controls Regulation"),
- regulation 71(1) of the Import of, and Trade in, Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020 (S.I. 2011/1197), and
- regulation 33(2) of the Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) (No. 2) Regulations 2020 (S.I. 2020/1631)

6.2 This instrument sets new transitional period end dates - for the delays to the introduction of the full official controls regime for goods coming from the EU, and for the 'grace period' permitting non-EU importers to GB to continue to use EU model export health certificates.

6.3 It also makes consequential amendments to the following legislation to provide for the changes to these dates to be reflected in related provisions:

- The Official Controls Regulation, as amended by S.I. 2020/1481 ("the Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020") and S.I. 2021/429 ("the Trade and Official Controls (Transitional Arrangements for Prior Notifications) (Amendment) Regulations 2021")
- S.I. 2011/1197 ("the Trade in Animals and Related Products Regulations 2011") as amended by S.I. 2020/1462 ("The Import of, and Trade in, Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020") and S.I. 2021/429:

- S.S.I. 2012/177 (“the Trade in Animals and Related Products Regulations (Scotland) 2012”) as amended by S.S.I. 2020/458 and S.I. 2021/429:
- S.I. 2020/1462
- S.I. 2020/1631 (“the Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) (No. 2) Regulations 2020”)

## 7. Policy background

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

- 7.1 Statutory instruments made and brought into force in late 2020 / early 2021, under EU Withdrawal Act powers, gave effect to the Government’s decision to introduce checks on EU SPS imports in phases, to start following the end of the Transition Period on 31 December 2020. These included amendments to regulations governing Official Controls, Trade in Animals and Related Products, and Plant Health – including provisions to introduce a first tranche of border controls for some specific plants and animal product commodities, commencing 1 April 2021.
- 7.2 On 10 March 2021, the EU Exit Operations Cabinet Committee (“XO Committee”) agreed that the original SPS border control transitional provisions in legislation will not operate in an appropriate way to complete the correction of the deficiency for which they were originally intended – that is, the need to introduce checks on EU imports in a way that is reasonable and proportionate to the capacity of businesses affected to meet these requirements, while they are dealing with the ongoing impacts of the coronavirus pandemic.
- 7.3 The powers provided to change the end date for the transitional provisions must therefore be exercised, to properly enable them to give effect to the introduction of import controls for EU SPS goods as originally intended. This further extension will allow businesses affected by the pandemic to familiarise themselves with the new SPS compliance requirements and IT systems and ensure that necessary infrastructure and processes are in place at Border Control Posts, further minimising the risk of any disruption.
- 7.4 Without this instrument, from the end of July 2021, import and exports businesses in GB and EU respectively will be obliged to comply with the SPS control requirements as currently set out in legislation. This will remain a significant risk, even if Government offers assurances that the control requirements will – temporarily - not be enforced.
- 7.5 The instrument also extends (from July 2021 to October 2021) the grace period during which Great Britain can legally accept EU model Export Health Certificates (“EHCs”) accompanying consignments of animals and animal products imported into Great Britain. This extension is to allow further time for specific ‘Rest of World’ countries to incorporate the new Great Britain EHCs into their export systems, if needed, where there are particular issues that have been raised in line with the introduction of certificates from the EU.

### *Explanations*

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

- 7.6 The EU Regulations referenced in Section 6 above form part of the EU Smarter Rules for Safer Food consolidated regulatory regime. This regime was designed to

modernise, simplify and improve existing health and safety standards for the agri-food chain, taking a risk-based approach to animal, plant and public health protection, and introducing more efficient pest and disease control measures. As noted, these EU Regulations were fully retained and made operable in UK legislation, through a series of instruments laid in late 2020 to give effect to the requirements of the EU Withdrawal Act.

Why is it being changed?

- 7.7 The instrument makes further provision, including changes to the Regulations listed in Section 6.3 above, to ensure biosecurity border controls on EU imports are operable within Great Britain and deliver functioning sanitary and phytosanitary controls between Great Britain and the EU following the end of the Transition Period.

What will it now do?

- 7.8 This instrument will ensure the continued functioning of SPS controls between Great Britain and the EU following the end of the Transition Period. It changes the dates from which specific types of import control measures will apply to specific commodities of animals and plants, and animal and plant products, during import to Great Britain from EU Member States.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 The Official Controls (Extension of Transitional Periods) Regulations 2021 amends instruments made under s2(2) of the European Communities Act 1972. In accordance with the requirements of paragraph 15 of Schedule 8 to the European Union (Withdrawal) Act 2018, the Minister is required to make a statement setting out:

- why there are good reasons for the amendment/revocation
- the law relevant to the amendment/revocation
- the effect of the amendment/revocation on retained EU law

In the Department's view there are good reasons to amend the Trade in Animals and Related Products Regulations 2011 (S.I. 2011/1197) and the Trade in Animals and Related Products (Scotland) Regulations 2012 (S.S.I. 2012/177), both of which are made under section 2(2) of the European Communities Act 1972. This is because the amendments are consequential to ensure that the changes to the end date of the transitional staging period for applying official controls to goods imported into Great Britain from the EU are given effect.

- 8.2 The effect of the amendments on retained EU law is set out in paragraph 7.

## **9. Consolidation**

Not applicable to this instrument.

## **10. Consultation outcome**

- 10.1 A consultation exercise was undertaken in June 2021, 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.

- 10.2 The consultation was targeted at key stakeholders in the SPS sector, including representative trade and industry organisations and interest groups, Port Health Authorities and Defra-led sector advisory groups. A total of 155 organisations and individuals were consulted.
- 10.3 At the close of consultation, Defra had received a total of 12 responses. There is broad and general consensus that the changes being delivered to the controls timeline are necessary for effective sector readiness, and failure to implement these changes by the end of July as delivered by this instrument would create “impossible” requirements for importers to meet.
- 10.4 Devolved Administrations in Scotland and Wales have been consulted on the changes set out in this instrument as part of our process of seeking formal consent to lay: both administrations support the need for this instrument at official policy level.

## **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>
- 11.2 The Animal and Plant Health Agency and the Forestry Commission are the relevant delivery bodies for these Regulations, and are developing an implementation plan and associated guidance for publication on GOV.UK, which will be available on, or shortly after, the coming into force date of this instrument.

## **12. Impact**

- 12.1 There is no significant negative impact on business, charities or voluntary bodies. Any impact will be positive, as the instrument better enables businesses to meet readiness requirements for the planned introduction of SPS borders checks later in 2021 and 2022.
- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because it does not set out new policy in the risk-based control of SPS imports.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 This instrument applies equally to all businesses importing SPS commodities covered by the original amending Regulations, including small businesses. The risk of biosecurity compromise is not mitigated by the size of the business.

## **14. Monitoring & review**

- 14.1 No specific monitoring arrangements are needed.
- 14.2 As this instrument makes provision for the extension of time limited measures, and will only have effect for a limited time, no review clause is required.

## **15. Contact**

- 15.1 Julie Hull, Head of Policy and Legislative Affairs, SPS Programme at the Department for Environment, Food and Rural Affairs (telephone: 07824 106730 or email: julie.hull@defra.gov.uk) can be contacted with any queries regarding this instrument.
- 15.2 Peter Jinks, Deputy Director for SPS and Imports, Animal and Plant Health & Welfare Directorate, at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Benyon, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.

# Annex

## Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

### Part 1A

#### 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) or 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) or 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) or 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) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.  State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2  In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before IP completion 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) or	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or 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 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament 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.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion 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 IP completion day, and explaining the instrument's effect on retained EU law.



## Part 1B

### Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 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

## Part 2

### Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

#### 1. Equalities

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

“This instrument 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.

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

“In relation to this instrument, I, Lord Benyon, 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.”

- 1.3 This is because of the explanations set out in sections 7.2 – 7.5 above.

#### 2. Explanations

- 2.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

#### 3. Explanations where amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972

- 3.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Benyon, has made the following statement regarding regulations made under the European Communities Act 1972:

“In my opinion there are good reasons for the Official Controls (Extension of Transitional Periods) Regulations 2021 to amend the Trade in Animals and Related Products Regulations 2011 (S.I. 2011/1197) and the Trade in Animals and Related Products (Scotland) Regulations 2012 (S.S.I. 2012/177). This is because the amendments are consequential to ensure that the changes to the end date of the transitional staging period for applying official controls to goods imported into Great Britain from the EU are given effect. The effect of the amendments on retained EU law is set out in section 7.