EXPLANATORY MEMORANDUM TO

THE OFFICIAL CONTROLS (EXTENSION OF TRANSITIONAL PERIODS) (AMENDMENT) REGULATIONS 2022

2022 No. 621

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 to Regulation (EU) 2017/625 ("the Official Controls Regulation")[1], effective official border controls continue to operate following the end of the Transition Period.

2.2 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 phyto-sanitary ("SPS") goods.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 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.

6.2 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 dates of those transitional periods to be changed by statutory

[1] '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'.

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.

6.3 Statutory instruments made and brought into force in late 2020, under EUWA powers, gave effect to the Government's decision to introduce checks on EU SPS imports in phases, following the end of the Transition Period on 31 December 2020. These included amendments to regulations governing Official Controls, and Trade in Animals and Related Products.

6.4 These dates outlined in the transitional staging period have been amended previously by the Trade and Official Controls (Transitional Arrangements for Prior Notifications) (Amendment) Regulations 2021 (S.I. 2021/429), the Official Controls (Extension of Transitional Periods) Regulations 2021 (S.I. 2021/809), the Official Controls (Extension of Transitional Periods) (England and Wales) (Amendment) Regulations 2021 (S.I. 2021/1096), the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2021 (S.S.I. 2021/297), the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No. 2) Regulations 2021 (S.S.I. 2021/342), the Official Controls (Extension of Transitional Periods) (England & Wales) (Amendment) (No.2) Regulations 2021 (S.I. 2021/1443), The Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No. 3) Regulations 2021 (S.S.I. 2021/493) and the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2022 (S.S.I. 2022/90).

6.5 On 28 April 2022, the Government announced its decision to revise the current timetable for the introduction of all remaining import checks, with no further checks being introduced on EU goods in 2022. This decision is outlined in the Written Ministerial Statement published on that date[2], which recognised that businesses have faced a range of challenges over recent months as they recover from the global pandemic, in addition to the general public being affected by rising costs caused by Russia's war in Ukraine and energy prices. Therefore, remaining import checks will not come into force as planned from 1 July 2022.

6.6 Publication of a Target Operating Model is expected in Autumn 2022, which will set out the new regime of border import controls and will target the end of 2023 as the revised introduction date for import controls. This will include a technologically advanced approach to controls, aiming to reduce friction and costs of trade for businesses. The Border Operating Model will also be updated to outline further phasing specific to SPS goods from the EU. Additional time is needed to develop these, with updates anticipated in Autumn 2022.

6.7 This instrument amends the Official Controls (Extension of Transitional Periods) Regulations 2021 to change the end date of the transitional staging period, as previously amended by the Official Controls (Extension of Transitional Periods) (No.2) Regulations 2021 (S.I. 2021/1443) and the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No. 3) Regulations 2021 (S.S.I. 2021/493), from 30 June 2022 to 31 December 2022. While the Government has made it clear that new requirements for official controls will not now be

[2] Written Ministerial Statement made on 28 April 2022, made by Mr Jacob Rees-Mogg, Minister for Brexit Opportunities and Government Efficiency https://questions-statements.parliament.uk/written-statements/detail/2022-04-28/hcws796

introduced in 2022, the precise timeline for the introduction of those checks after 2022 is still being developed. The transitional staging period is being extended to the end of 2022 to reflect this. The Government therefore anticipates that a further statutory instrument will be needed in Autumn 2022 to reflect the updated Border Operating Model, outlining the phasing of import checks in 2023.

6.8 An effect of this instrument is also to extend, until 31 December 2022, the exemptions from import checks for personal goods which form part of passengers' luggage (excluding plants for planting) and which are intended for personal consumption or use, small consignments of products sent to natural persons which are not intended to be placed on the market, and pre-notification requirements for goods which are produced in Northern Ireland or the Republic of Ireland and moved or imported into Great Britain from the Republic of Ireland. Permanent policies are currently in progress and will be reflected in secondary legislation in due course.

6.9 The Meat Preparations (Amendment and Transitory Modification) (England) (EU Exit) Regulations 2020 (SI/2020/1666)[3], which is applicable in England, is also being amended to link the end date for the suspension of the requirement for meat products to be frozen, in relation to those products imported from the EEA member States, the Faroe Islands, Greenland or Switzerland to GB, to the end of the transitional staging period. This exemption is therefore extended to 31 December 2022. The Devolved Administrations will lay mirroring legislation to reflect this.

6.10 The Official Controls Regulation is also amended to remove the suspension of the regulation-making powers in Articles 53 and 54, allowing them to be exercised during the transitional staging period, meaning that further instruments can be made during the transitional staging period to set further detailed rules on checks on EU SPS goods, in addition to setting out the criteria for determining the frequency rates of physical checks and identity checks for certain plants, plant products and other objects. Further instruments laid using these powers will be subject to parliamentary scrutiny in accordance with Article 144 of the Official Controls Regulation.

6.11 The Official Controls Regulation is also amended to carve out high-priority (i.e. high risk) plants, plant products and other objects from EU member states, Liechtenstein and Switzerland from the scope of Article 44(2) which determines the appropriate frequency of controls on goods not presented to Border Control Posts. The frequency of checks on high-priority plants, plant products and other objects will be determined in accordance with the information specified in regulations made under Article 54, which is enabled through this instrument (see paragraph 6.10).

7. Policy background

What is being done and why?

7.1 To give effect to the Government decision on 28 April 2022, this instrument replaces the date for the ending of the transitional staging period, as set out in the Official Controls (Extension of Transitional Periods) Regulations 2021 (S.I. 2021/809), as most recently amended by the Official Controls (Extension of Transitional Periods) (England & Wales) (No. 2) Regulations 2021 (SI 2021/1443) and the Official

[3] Amended by the Meat Preparations (Amendment and Transitory Modification) (England) (EU Exit) (Amendment) Regulations 2021 (S.I. 2021/366) and the Meat Preparations (Amendment and Transitory Modification) (England) (EU Exit) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/972).

Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No. 3) Regulations 2021 (S.S.I. 2021/493) so that no further import checks will come into force on SPS goods from the EU in 2022.

7.2 The Government's decision to not introduce further checks on SPS goods during 2022 means that the following temporary policies are extended to 31 December 2022 through this instrument (with permanent policies to follow in due course):

- The suspension of the requirement for meat preparations imported into England from EEA member States, the Faroe Islands, Greenland, or Switzerland, to be deep frozen, keeping this temporary easement in line with the revised transitional staging period controls. This will allow meat preparations from these countries to continue to be imported in a chilled condition.
- Personal goods which form part of passengers' luggage (excluding plants for planting) and which are intended for personal consumption or use, and small consignments of products sent to natural persons which are not intended to be placed on the market are exempt from official controls.
- Goods which are produced in Northern Ireland or the Republic of Ireland and moved or imported into Great Britain from the Republic of Ireland are exempt from pre-notification requirements.

7.3 Restrictions on regulation-making powers in Articles 53 and 54 of the Official Controls Regulation are also removed so that the powers to set further detailed rules on checks on EU SPS goods and appropriate frequency rates for these checks for certain plants, plant products and other objects can be exercised during the transitional staging period.

7.4 The Official Controls Regulation is also amended to carve out high-priority plants, plant products and other objects from EU member states, Liechtenstein, and Switzerland from the scope of Article 44(2) which determine the appropriate frequency of controls on goods not presented to Border Control Posts. The frequency of checks on high-priority plants, plant products and other objects will be determined in accordance with the information specified in regulations made under Article 54, which is enabled through this instrument (see paragraph 6.10).

7.5 Without this instrument, all SPS goods imported from EU to GB will be obliged to comply with documentary, physical and identity checks at Border Control Posts across Great Britain from 1 July 2022. Additionally, Export Health certificates and Phytosanitary certificates would be required for all animal products and regulated plants, plant products and other objects respectively.

7.6 Introducing controls in July would have replicated the controls that the EU applies to their global trade. This would have introduced complex and costly checks that would have then been altered later as our transformation programme is delivered. Therefore, the powers provided to change the end date for the transitional provisions must now be exercised, to revise the timeline for introduction of import controls for EU SPS goods as originally intended – that is, in a timeframe which was reasonable and achievable for the SPS imports sector, minimising the risk of food supply chain disruption.

Explanations

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

7.7 The retained EU Regulations referenced in Section 2 above formed 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 EUWA.

Why is it being changed?

7.8 The instrument makes further provision, including changes to the Regulations listed in Section 6 above, to ensure biosecurity border controls on EU imports are operable within GB, and deliver functioning SPS controls between the EU and GB following the end of the EU Exit Transition Period, whilst balancing the increasing cost of living caused by Russia's war in Ukraine and energy prices.

What will it now do?

7.9 This instrument will enable the continued functioning of SPS controls between the EU and GB following the end of the Transition Period. The end of the transitional staging period is amended to 31 December 2022, after which import checks will be phased in to apply to SPS goods entering GB from the EU. Further details of this phasing will be published in Autumn 2022, followed by secondary legislation to reflect this.

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 2018.

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

9. Consolidation

9.1 Not applicable to this instrument.

10. Consultation outcome

10.1 A consultation exercise was undertaken in May 2022, 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, interest groups and Port Health Authorities. Over 120 organisations and individuals were consulted.

10.3 At the close of consultation, Defra had received 6 responses. These responses broadly understood the delay given the significance of full import checks and supply chain pressures. However, respondents expressed concern that businesses exporting SPS goods from GB to EU face full import controls, whilst EU goods are not subject to the same controls. Additionally, respondents expressed that biosecurity should continue to be maintained in the period before full import controls are applied and sufficient

notice of implementation of full import controls would be imperative to give businesses sufficient time to plan accordingly.

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, Food Standards Agency, and 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 The impact on business, charities or voluntary bodies is generally low. This instrument better enables businesses to meet readiness requirements for the revised timetable for introduction of SPS borders checks in 2023, involving a technologically advanced approach to controls, aiming to reduce friction and costs of trade for businesses.

12.2 However, it is recognised that businesses running Border Control Posts have made significant investment in recruiting staff and investing in infrastructure ahead of the anticipated introduction of checks from 1 July 2022. Discussions will be taking place with these businesses to help mitigate the decision to delay import checks until 2023.

12.3 There is no significant impact on the public sector.

12.4 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, with no new regulatory burdens being introduced on small businesses. The risk of biosecurity compromise is not mitigated by the size of the business.

14. Monitoring & review

14.1 These measures will be kept under review, with permanent policies for the temporary arrangements in paragraph 7.2 to be announced and outlined in secondary legislation in due course.

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 Anna Molyneux, Head of OCR Policy & Legislation, SPS Programme at the Department for Environment, Food and Rural Affairs (telephone: 07776 619093 or email: anna.molyneux@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
Appropriate-ness	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	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
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."