EXPLANATORY MEMORANDUM TO

THE OFFICIAL CONTROLS (EXTENSION OF TRANSITIONAL PERIODS) (AMENDMENT) REGULATIONS 2024

2024 No. 540

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 His Majesty.

2. Declaration

2.1 Lord Douglas-Miller, Parliamentary Under Secretary of State, at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2 Deborah Wells and Fiona James, Deputy Directors for SPS & Imports Policy, Animal and Plant Health and Welfare Directorate, at the Department for Environment, Food and Rural Affairs confirm that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Santosh Chana at the Department for Environment, Food and Rural Affairs, email: santosh.chana@defra.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The purpose of this instrument is to extend the transitional staging period ("the TSP") which expires on 29 April 2024. This is to protect biosecurity and support trade by ensuring that within Great Britain ("GB"), and between GB and relevant third countries as defined in Annex 6 to Regulation (EU) 2017/625 ("the Official Controls Regulation"), effective official border controls continue to operate following the end of the post-EU exit Transition Period. It also removes the blanket condition for imported meat preparations to be deep frozen.

4.2 The changes made by this instrument relate to controls on imports to Great Britain for the set of commodities known collectively as sanitary and phytosanitary ("SPS") goods.

Where does the legislation extend to, and apply?

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

4.4 The territorial application of this instrument is England, Wales and Scotland for regulations 1 and 4, and England only for regulations 2 and 3.

5. Policy Context

What is being done and why?

5.1 On 28 April 2022, the UK Government announced a pause to the introduction of further import controls on SPS goods from the EU to GB, and its intention to develop a Border Target Operating Model setting out a new regime for import controls. This new regime will apply equally to EU goods and goods from the rest of the world, with a proportionate risk-based and technologically advanced approach to controls. At this time, the Government confirmed no additional checks would come into force during 2022 and therefore the TSP was extended to 31 December 2022. The Official Controls (Extension of Transitional Periods) (Amendment) (England) Regulations 2022 further extended the end date of the Transitional Staging Period until 31 January 2024. The Official Controls (Extension of Transitional Periods) (Miscellaneous Amendments) Regulations 2024 further extended the transitional staging period until 29 April 2024.

5.2 Regulation 2 revokes Article 3(3) of Commission Decision (EU) 2000/572 to remove the blanket condition for imported meat preparations to be deep frozen. Import conditions for meat preparations will instead be considered on a country-by-country basis, managed by market access and health certification. This will provide a single process that applies equally to all trading partners based on the risk posed by the product to animal and/or public health and remove the need for the suspension of the requirement for meat preparations imported into England from the European Economic Area (EEA), the Faroe Islands, Greenland, and Switzerland to be deep frozen.

5.3 Regulation 3 revokes Regulation 3, a transitory modification, from the Meat Preparations (Amendment and Transitory Modification) (England) (EU Exit) Regulations 2020 which applied to Article 3(3) of Commission Decision (EU) 2000/572.

5.4 Regulation 4 extends the TSP, a period during which the requirements for certain official documents, and for the performance of official controls in relation to some categories of animals, plants and other goods imported into GB, have been temporarily eased. The TSP is set to expire on 29 April 2024, however due to the milestones under the published BTOM, this is being extended to 31 January 2025 via an amendment to the Official Controls (Extension of Transitional Periods) Regulations 2021 ("S.I. 2021/809") to ensure that EU goods are not subject to default official controls from 29 April, and implement the BTOM for EU goods in a phased approach in line with the published BTOM milestones in advance of further legislative changes later in the year. This instrument therefore extends the end date of the TSP until 31 January 2025. This extension does not prejudice extensions through future instruments at a later date.

6. Legislative and Legal Context

How has the law changed?

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

instrument, and this instrument is made in exercise of those powers, namely paragraph 2 of Annex 6 to the Official Controls Regulation.

6.3 The current expiration date for the TSP is 29 April 2024, as given in the Official Controls (Extension of Transitional Periods) Regulations 2021 ("S.I. 2021/809"). This latest instrument changes the end date of the Transitional Staging Period from 29 April 2024 to 31 January 2025.

6.4 The Devolved Administrations in Scotland and Wales have laid separate Statutory Instruments mirroring the changes outlined to Commission Decision 2000/572 in this Explanatory Memorandum.

Why was this approach taken to change the law?

6.5 There needs to be an extension to the TSP to ensure that SPS goods imported from the EU to GB are not subject to default level official controls from 30 April 2024.

7. Consultation

Summary of consultation outcome and methodology

7.1 The devolved administrations in Scotland and Wales have been consulted about the proposed amendments and are content, noting the importance of maintaining a consistent approach to SPS controls in GB.

7.2 Defra has carried out targeted stakeholder engagement with the Food Standards Agency and industry stakeholders on the proposed amendments to Commission Decision (EU) 2000/572 and on extending the TSP as part of wider engagement on implementation of the BTOM from 30 April. A total of 8 responses were received, with 5 providing feedback in relation to the measures included in this instrument.

7.3 Several stakeholders questioned the interaction between extension of the TSP and the import controls being introduced on 30 April 2024. Extending the TSP from 29 April to 31 January 2025 is necessary to bring in the second phase of BTOM controls on 30 April 2024 for EU goods ahead of further legislative changes later in the year; and continue the different arrangements for goods entering Great Britain from Ireland – specifically that the government will phase in checks on non-qualifying Northern Ireland goods to a different timeline, and will continue to ensure that qualifying Northern Ireland goods continue to benefit in full from unfettered access to the rest of the UK market. The implementation of these new controls from 30 April are legislated for separately.

7.4 Feedback on the proposed amendments to Decision (EU) 2000/572 focused on the inability of GB businesses to export chilled meat preparations to the EU, while noting that the amendments would be welcome to importers in GB. The UK government continues to work with the EU to unblock this unnecessary barrier to trade which we believe is not justified on a risk basis.

8. Applicable Guidance

8.1 There is no guidance on this instrument, as it simply extends the date applicable to existing arrangements. Defra has issued guidance on www.gov.uk on the importation of meat preparations.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because impacts of the changes sought are expected to be minimal. Although accurate data on the volumes of imports of meat preparations that may be impacted is not available, the overall value of trade in imported meat and meat products from the EU was estimated to be worth £4.8bn in 2021. It is estimated the volume of meat preparations from EEA member States, the Faroe Islands, Greenland or Switzerland form a very small part of this and will be protected following implementation of the new regime.

9.2 Other countries, which currently have to deep freeze exports of meat preparations, will continue to need to do so unless they successfully apply for market access for chilled goods. Any market access applications will take time to approve so there will be no immediate impact from day one.

Impact on businesses, charities and voluntary bodies

9.3 There is no significant impact on business, charities or voluntary bodies.

9.4 There is no significant impact on the public sector.

9.5 The legislation applies to activities that are undertaken by small businesses.

9.6 No specific action is proposed to minimise regulatory burdens on small businesses.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring of this legislation is that these measures will be kept under review, with permanent policies for the temporary arrangements in further legislation shortly. 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.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Lord Douglas-Miller has made the following statement:

"No review clause is necessary as this instrument makes provision for the extension of time limited measures and will only have effect for a limited time. Import conditions for meat preparations will be kept under review, informed by risk assessments taking account of animal and public health risks, and managed through market access and health certification".

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument will be laid on 22 April 2024 and will come into force on 28 April 2024, breaching the 21-day convention. Due to the complexities of finalising another instrument, The Official Controls (Miscellaneous Amendments) Regulations 2024, a decision was taken, at late notice, to remove the TSP extension from that instrument and to legislate for this separately. This would mitigate the risk that the TSP would expire on 29 April 2024 if that instrument could not progress as anticipated. Whilst breaking the 21-day rule is regrettable, the potential risk of the TSP extension falling away had to be avoided to ensure EU goods would not be subject to default level official controls.

12. European Convention on Human Rights

12.1 Lord Douglas-Miller, Parliamentary Under Secretary of State has made the following statement regarding Human Rights:

"In my view the provisions of the Official Controls (Extension of Transitional Periods) (Amendment) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts"). It does however relate to the withdrawal of the United Kingdom from the European Union because it extends the transitional staging period stemming from the withdrawal.