EXPLANATORY MEMORANDUM TO

THE OFFICIAL CONTROLS (EXTENSION OF TRANSITIONAL PERIODS) AND PLANT HEALTH (FREQUENCY OF CHECKS) (MISCELLANEOUS AMENDMENTS) REGULATIONS 2024

2024 No. 1001

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 Baroness Hayman of Ullock, 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 and 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 Jennifer Clough at the Department for Environment, Food and Rural Affairs, email: Jennifer.Clough@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 for the implementation of import checks and controls on certain sanitary and phytosanitary ('SPS') goods entering Great Britain ('GB') from certain countries.

4.2 The Transitional Staging Period ('TSP') is 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. Under previous legislation, the TSP was due to end on 31 January 2025, and this instrument extends this to 1 July 2025.

4.3 This instrument extends an easement which delays the requirement for import checks (that applies to rest of the world countries) in respect of plants, plant products, and other objects (such as machinery and vehicles which have been used for agricultural or forestry purposes) entering GB from the EU, Liechtenstein or Switzerland through a West Coast Port (as listed in the definition of 'relevant port' in paragraph 2 of Annex 6 to Regulation (EU) 2017/625 of the European Parliament and of the Council ('the Official Controls Regulation'), before 1 July 2025.

4.4 This instrument adds Swansea Port to the list of West Coast Ports (contained in the aforementioned definition of 'relevant port'). This is because it had previously been omitted from the definition of 'relevant port'.

4.5 Finally, this instrument extends an easement which delays the requirement for import checks (that applies to rest of the world countries) in respect of certain fruit and vegetables as set out in Schedule 2A of the Plant Health (Amendment etc.) (EU Exit) Regulations 2020 imported from the EU, Liechtenstein or Switzerland before 1 July 2025.

Where does the legislation extend to, and apply?

4.6 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, and Scotland.

4.7 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, and Scotland.

5. Policy Context

What is being done and why?

5.1 In 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 ('BTOM'), setting out a new regime for import controls. This new regime would 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 (S.I. 2022/1374), The Official Controls (Extension of Transitional Staging Periods) (Amendment) (Wales) Regulation 2022 (S.I. 2022/1317 (W. 266), and the Official Controls and Imports Conditions (Transitional Staging Periods) (Miscellaneous Amendments) (Scotland) Regulations 2022 (S.S.I. 2022/90) extended the TSP until 31 January 2024, when the first milestone of BTOM was implemented. The Official Controls (Extension of Transitional Periods) (Miscellaneous Amendments) Regulations 2024 (S.I. 2024/20) further extended the TSP until 29 April 2024 in line with the implementation of the second milestone from 30 April 2024, and The Official Controls (Extension of Transitional Periods) (Amendment) Regulations 2024 (S.I. 2024/540) further extended the TSP until 31 January 2025 to allow time for further legislation to be laid to provide a permanent legislative basis for the BTOM, and allow arrangements at West Coast Ports to continue.

5.2 Regulation 3 of this instrument extends the TSP until 1 July 2025, to prevent the remaining BTOM controls from taking effect by default, therefore allowing the introduction of new controls in a phased way which works for traders whilst protecting biosecurity. This is to avoid a gap between easements ending, and new policies coming into effect. This ensures that certain EU SPS goods are not subject to default official controls from 31 January 2025.

5.3 Import checks on plants, plant products, and other objects, such as machinery and vehicles used for agricultural or forestry purposes, which are entering GB from EU member states, Liechtenstein or Switzerland, via a West Coast Port, as they apply to rest of the world countries, will now be implemented from 1 July 2025. This will ensure the requirement for these checks do not commence before Border Control Point

('BCP') facilities are in place. Without this legislation, they would come into effect on 1 November 2024.

5.4 Swansea Port is being included in the list of West Coast Ports, as it had previously been omitted.

5.5 Industry requires time to prepare for the introduction of import checks on medium risk fruit and vegetables[1] being imported to GB from the EU, Liechtenstein and Switzerland. Extending this easement, which ensures that the requirement for import checks on these goods, as they apply to rest of the world countries, do not apply until 1 July 2025, provides industry with additional time to prepare for the introduction of these checks. Without this additional time, there was a risk that there would be a shortage of these products, due to them being held at the border. The easement was previously due to end on 31 October 2024, as implemented in the Official Controls Regulation by the Plant Health (Fees) (England) and Official Controls (Frequency of Checks) (Amendment) Regulations 2024 (S.I. 2024/557).

What was the previous policy, how is this different?

5.6 The policy remains the same; and that is the phased implementation of import controls on certain goods from certain countries.

6. Legislative and Legal Context

How has the law changed?

6.1 The EU (Withdrawal) Act 2018 converted and preserved EU law at the end of the transition period into domestic law ('assimilated EU law'). It also provided for amendments to be made to address deficiencies arising because of EU exit. Those amendments included the introduction of a 'Transitional Staging Period' for goods entering GB from the EU and certain other countries, via Annex 6 to the Official Controls Regulation. Provision was made for the end date of that transitional period to be capable of being changed by statutory instrument, and this instrument is made in part in exercise of that power.

6.2 Prior to this instrument, the expiration date for the TSP was 31 January 2025, as provided for in the Official Controls (Extension of Transitional Periods) (Regulations 2021 ('S.I. 2021/809'). This instrument amends those Regulations to extend the end date of the Transitional Staging Period from 31 January 2025 to 1 July 2025.

6.3 The principal legislation governing the controls required on movement into GB of plants and plant products is contained within assimilated EU law, specifically Regulation (EU 2016/2031 (the Plant Health Regulation), and in the Official Controls Regulation – which also governs the control of import of animals and other goods. There is also other legislation made under these two pieces of legislation.

6.4 Amendments are also made to Annex 6 to the Official Controls Regulation to delay the requirement for physical and identity checks to be determined having regard to the information specified in the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022 ('S.I. 2022/739'), in respect of-

- Plants, plant products and other objects entering GB which originate from the EU, Liechtenstein or Switzerland via specified West Coast Ports (a 'relevant port') from

[1] A list of medium risk fruit and vegetables can be found on the UK Plant Health Portal: https://planthealthportal.defra.gov.uk/trade/imports/target-operating-model-tom/btom-risk-categorisations/#A-2_R-C, and also in Schedule 2A to the Plant Health (Amendment etc.) (EU Exit) Regulations 2020: https://www.legislation.gov.uk/uksi/2020/1482/schedule/2A.

31 October 2024 to 1 July 2025 (aligning to the end of the TSP), including adding Swansea Port to the definition of 'relevant port'.

- Fruit and vegetables entering GB which originate from the EU, Liechtenstein or Switzerland, from 31 October 2024 to 1 July 2025.

6.5 Amendments are consequently made to S.I. 2022/739, so that such goods are temporarily out of scope. Such goods may be subject to random checks or checks on a risk basis determined by the competent authority in accordance with the factors specified in Article 44(2) of the Official Controls Regulation and published online.

Why was this approach taken to change the law?

6.6 There needs to be an extension to the TSP by way of a legislative amendment to ensure that certain SPS goods imported from the EU and certain countries to GB are not subject to default levels of official controls from 31 January 2025.

6.7 In addition, legislative amendments are required to ensure that-

- the approach to delay the requirement for import checks of plants, plant products and other objects entering GB from the EU, Switzerland, and Liechtenstein through a West Coast Port (a 'relevant port') until 1 July 2025 is provided for;
- certain fruit and vegetables entering GB from the EU, Switzerland and Liechtenstein are not subject to the requirement for checks from 1 November 2024. This approach means that industry has more time to prepare for the implementation of these checks;
- Swansea Port is added to the definition of a 'relevant port' contained within the Official Controls Regulation and S.I. 2022/739, so that it is treated in the same way as other relevant ports (as described in the first bullet point).

7. Consultation

Summary of consultation outcome and methodology

7.1 The Department conducted a targeted consultation which ran for three weeks, between 13 May – 3 June 2024. This focused on the changes relating to the extension of the easement relating to the introduction of the requirement for checks on certain fruit and vegetables imported to GB from the EU, Liechtenstein and Switzerland. The consultation also focused on the extension of the easement relating to checks on EU goods entering GB via specified West Coast Ports from the Republic of Ireland. This was published on the UK's Plant Health Portal. A total of one response was received, which sought clarity on the definition of medium risk fruit and vegetables as they considered this to be insufficiently clearly set out in the engagement documents. This list can be found on the UK Plant Health Portal2 and also in Schedule 2A to the Plant Health (Amendment etc.) (EU Exit) Regulations 2020.

7.2 In addition, a separate targeted consultation was held regarding the extension of the TSP, which sought views on amending the end date of the TSP from 31 January 2025 to 1 July 2025. This ran for one week, between 30 July 2024 and 6 August 2024. In total, six responses were received. Four of these were supportive of the proposed changes, noting that it was preferable to businesses for new controls to be introduced with adequate notice to allow business planning, whilst two of the responses sought additional information on the detail of the TSP.

[2] https://planthealthportal.defra.gov.uk/trade/imports/target-operating-model-tom/btom-risk-categorisations/#A-2_R-C

7.3 The Department has engaged with officials from the Devolved Governments in Scotland and Wales on the changes implemented by the legislation, who were supportive of the changes, noting the importance of maintaining a consistent approach to SPS controls in GB. Devolved Government consent was also received on this legislation.

8. Applicable Guidance

8.1 There is no guidance on this instrument, as it extends the date applicable to existing arrangements.

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 it does not set out new policy.

9.2 The measures provide a benefit to industry, as businesses will have additional time to prepare for the introduction of checks. This means that they will have additional time to familiarise themselves with the requirements around the introduction of checks, and to ensure that processes and systems are properly in place in preparation for this.

9.3 Since the regulations extend the TSP for implementing import checks on certain SPS goods from certain countries from 31 January 2025 to 1 July 2025, it means that businesses will have an additional five months to prepare.

9.4 In addition, the legislation extends the end of an easement which means that the requirement for import checks, as they apply to rest of the world countries, do not apply to certain fruit and vegetables imported from the EU, Liechtenstein or Switzerland. This provides an additional eight months of preparation time, as the easement was previously due to end on 31 October 2024 and will now end 1 July 2025.

Impact on businesses, charities and voluntary bodies

9.5 There is no significant impact on business, charities or voluntary bodies because there is no substantial change in policy: the policy delays the introduction of checks on import goods.

9.6 The legislation does impact small or micro businesses, but these are expected to be minimal. No specific action is proposed, or has been taken, to exempt regulatory burdens on small or micro businesses. The reason for this is that the amendments apply equally to all businesses importing certain SPS goods. The measures present a benefit to businesses, in that they provide industry with additional time to prepare for the changes.

9.7 There is no significant impact on the public sector because the measures extend the implementation period for these checks, meaning that there is a longer period before public sector inspectors will need to commence these checks.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that these measures will be kept under review. Since the 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. Baroness Hayman of Ullock, Parliamentary Under-Secretary of State, has made the following statement: "A statutory review clause is not necessary for this instrument. This is because it makes provision for measures which are time limited in nature, and which will only have effect for a limited time until their expiry."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Baroness Hayman of Ullock, 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 Period) and Plant Health (Frequency of Checks) (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 easements relating to the implementation of import checks on certain SPS goods being imported into Great Britain from certain countries, including from the EU, meaning that the requirement for these checks will be implemented later. It also amends the definition of a 'relevant port' by adding Swansea Port to the definition. These measures stem from the United Kingdom's exit from the European Union.