EXPLANATORY MEMORANDUM TO

THE OFFICIAL CONTROLS (EXTENSION OF TRANSITIONAL PERIODS) (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2021

2021 No. 1096

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 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")[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 and Wales of products of animal origin, and animal by-products, which are part of the set of commodities known collectively as sanitary and phyto-sanitary ("SPS") goods.

2.3 Operability legislation made in late 2020 under the European Union (Withdrawal) Act 2018 ("the EU Withdrawal Act") set out a 'transitional staging period', to allow controls on EU SPS imports to be introduced over several months. This staging was intended to help trade sectors and related controls infrastructure to be ready for the additional volume of biosecurity checks which are one consequence of our decision to leave the European Union.

2.4 This instrument uses the powers inserted into the Official Controls Regulation by the exit legislation, to amend the introduction of checks previously scheduled to come into force in October 2021, to bring prenotification requirements into force in January 2022, and all remaining checks at the end of the transition period – currently March 2022, but to be amended by a non-urgent SI later this year to deliver the revised transition end date of July 2022.

2.5 This amendment will ensure that the phased introduction timetable of import border controls measures can be fully met, having regard to the unprecedented adverse direct and indirect effects of the coronavirus pandemic on global import and export businesses, and in particular those within the food supply chain.

[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'

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument will come into force on 29th September 2021, breaching the 21-day convention. The original intention was to lay this SI by 07 September, and for it to address specific delivery challenges for October's scheduled checks. However, this SI was paused, due to wider consideration of the timeline for introducing EU checks, and the legislative requirements to give effect to this.

3.2 The pragmatic new timeline for checks was announced in a Written Ministerial Statement on 14th September, has already been widely trailed and discussed in mainstream media, and is well understood (and has been well received) by the affected sector, which had expressed acute concerns to Government about the continued adverse effect of the pandemic on supply chain processes and requirements.

3.3 The decision to legislate for a delay reflects those concerns, and the risks of food supply compromise that would arise without this instrument. Failure to lay this instrument would be prejudicial and create uncertainty in the sector and amongst the general public, exacerbating concerns already extant around food supply and potential shortages due to unmanageable control pressures on the supply chain.

3.4 The instrument is an enabling rather than prejudicial measure. Without it, the EU imports sector and in particular agri-food traders would be significantly adversely affected, by being forced to comply with control requirements for which capacity shortfalls (at border control posts, and in the part of EU traders themselves) would result in immediate and significant delays in transits, which could not be alleviated.

3.5 Because this instrument is already in breach of the 21-day rule, it only deals with those matters requiring urgent legislative changes arising from the proximity of the Government decision to the October 2021 date, on which checks would be required to come into force under the previously agreed timeline. The Government intends to lay a further instrument to deal with the other aspects of the policy announced on 14th September, including a change to the overall end date of the transitional staging period, to 1st July 2022.

4. Extent and Territorial Application

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

4.2 The territorial application of this instrument is England and Wales.

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. 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 Article 144(6) of, and paragraph 2 of Annex 6 to, the Official Controls Regulation.

6.2 This instrument removes an earlier end date for the transitional staging period, as set out in the Official Controls (Extension of Transitional Periods) Regulations 2021 (S.I. 2021/809), for the introduction of documentary controls on EU imports of products of animal origin ('POAO'), and animal by-products ('ABP').

6.3 The instrument 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"), S.I. 2021/429 ("the Trade and Official Controls (Transitional Arrangements for Prior Notifications) (Amendment) Regulations 2021") and S.I. 2021/809 ("the Official Controls (Extension of Transitional Periods) Regulations 2021"); and
- 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"), S.I. 2021/429 and S.I. 2021/809.

7. Policy background

What is being done and why?

7.1 Statutory instruments made and brought into force in late 2020, under EU Withdrawal Act 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, which required pre-notification, health certification and documentary checks on imports of EU POAO and ABP to be in force from 1st October 2021.

7.2 On 14 September 2021, the Government announced its decision to revise the current timetable for the introduction of all remaining checks. This decision recognised that businesses have faced a range of challenges over recent months as they recover from the global pandemic which has impacted supply chains across Europe, and that this impact is being felt particularly by the agri-food sector.

7.3 The powers provided to change the end date for the transitional provisions must therefore be exercised, to give effect to the 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.

7.4 Without this instrument, from 1 October 2021 businesses in GB importing from the EU, and EU businesses exporting to GB, will be obliged to comply with the SPS control requirements for pre-notification, health certification and documentary checks, as currently set out in legislation. Attempting to comply with these requirements would create a significant risk of sector confusion and disruption to the food supply chain into Great Britain.

Explanations

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

7.5 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?

7.6 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 England and Wales, and deliver functioning sanitary and phytosanitary controls between England and Wales and the EU following the end of the Transition Period.

What will it now do?

7.7 This instrument will enable the continued functioning of SPS controls between England and Wales 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 animal products, during import to England and Wales from EU Member States.

8. European Union Withdrawal and Future Relationship

8.1 The Official Controls (Extension of Transitional Periods) (England and Wales) (Amendment) 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), which is 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

9.1 Not applicable to this instrument.

10. Consultation outcome

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

10.3 At the close of consultation, Defra had received a total of 4 responses. There is a 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 September 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. Due to timing constraints within the Scottish Parliament, the Scottish Government has laid (31 August 2021) a broadly similar Scottish Statutory Instrument amending the dates of checks due to come into force from 1st October 2021, to 1st March 2022.

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 as are Local Authorities and Public Health Authorities, 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 revised timetable for introduction of SPS borders checks in 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
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 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 7.1 – 7.4 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) (England and Wales) (Amendment) Regulations 2021to amend the Trade in Animals and Related Products Regulations 2011 (S.I. 2011/1197). 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 paragraph 7.