POLICY NOTE

THE OFFICIAL CONTROLS (LOCATION OF BORDER CONTROL POSTS) (SCOTLAND) REGULATIONS 2026

SSI 2026/61

The above instrument was made in exercise of the powers conferred by Articles 64(2) and 144(6) of 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 instrument is subject to negative procedure.

Summary Box

The overarching policy intent of these Regulations is to address the uncertainty for investment decisions regarding new Border Control Post facilities at a point of entry, thus facilitating new potential trade routes between Scotland and the EU. The Regulations amend Commission Delegated Regulation (EU) 2019/1012 ("the 2019 Regulation") supplementing Regulation (EU) 2017/625 ("The Official Controls Regulation") of the European Parliament and of the Council by derogating from the rules on the designation of control points and from the minimum requirements for Border Control Posts. The instrument establishes an additional case and conditions under which a Border Control Post may be situated at a distance other than in the immediate vicinity of a point of entry into Scotland.

Policy Objectives

Official controls and official activities are carried out at the first point of entry on Sanitary and Phytosanitary (SPS) products so that those products are not diverted or offloaded before those controls and activities can be carried out. Since leaving the EU, the introduction of import controls under the Border Target Operating Model (BTOM) has meant that imported products from the EU and certain other territories are required to enter Scotland through a designated Border Control Post (BCP), a requirement under schedule 5 of the Trade in Animals and Related Products (Scotland) Regulations 2012[1] and Annex 6 to Regulation (EU) 2017/625 (the Official Controls Regulation)[2].

Currently assimilated direct legislation sets out the minimum requirements on the location of BCPs. Article 64 of Regulation (EU) 2017/625 of the European Parliament and of the Council ("the Official Controls Regulation")[3] stipulates that a BCP must be in the immediate vicinity of the port of entry. Article 3 of Commission Delegated Regulation (EU) 2019/1012[4] supplements this by allowing a BCP to be situated at a distance other than in the immediate vicinity of the point of entry into Great Britain but only where specific geographical

[1] https://www.legislation.gov.uk/ssi/2012/177/schedule/5
[2] https://www.legislation.gov.uk/eur/2017/625/annex/6
[3] https://www.legislation.gov.uk/eur/2017/625/article/64
[4] https://www.legislation.gov.uk/eur/2019/1012/article/3

constraints prevent or restrict the efficient performance of official controls and other official activities.

In May 2025, the UK Government and the European Union (EU) agreed a Common Understanding[5] including agreeing to work towards establishing a 'Common Sanitary and Phytosanitary (SPS) Area' under an SPS Agreement. If an SPS Agreement is reached, this would result in the vast majority of movements of animals, animal products, plants and plant products, between Great Britain and the EU no longer requiring many of the certificates and border controls that are currently in place.

The possibility of an SPS agreement with the EU is a welcome possibility that the Scottish Government has long advocated for. It does, however, also create uncertainty on investment decisions for establishing new BCP facilities at a point of entry. Decisions to establish the facilities required for a BCP are principally investment decisions for operators.

Under Article 64(2) of the Official Controls Regulation, Scottish Ministers may make regulations concerning the cases where, and conditions under which, a BCP may be situated at a distance other than in the immediate vicinity of the point of entry into Scotland.

This instrument exercises that power to provide that a BCP may be located at a place not in the immediate vicinity of a point of entry, where the BCP and the point of entry are in the same freeport, known in Scotland as “Scottish Green Freeports”. These are areas which have already been identified as ones where special tax sites may be designated in order to encourage investment and development in the area. There are currently two in Scotland: Inverness and Cromarty Firth, and Firth of Forth.

In order to protect biosecurity and public health, the instrument imposes conditions that, in these cases, the competent authority must be satisfied that the person who will be responsible for operating the BCP will put in place adequate measures to manage any risk to human, animal or plant health or the environment arising from the distance from the point of entry to the BCP.

This will help to address the uncertainty on investment decisions around new BCP facilities. It could allow an existing BCP designated for a specific category of goods at one point of entry to also serve as the BCP for the same goods arriving at another point of entry, or it could allow an existing BCP to be designated for an additional point of entry in its area with only minor facility adjustments to accommodate a new category of goods, or it could support the development and designation of a new BCP to serve multiple points of entry within the area. The measures are targeted at areas for development and investment, will ensure that goods are not carried over significant distances before checks are carried out, and that satisfactory arrangments will need to be in place to manage any risks arising from the location of the BCP.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children’s rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the Official Controls (Location of Border Control Posts) (Scotland) Regulations 2026 are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

[5] https://www.gov.uk/government/publications/ukeu-summit-key-documentation/uk-eu-summit-common-understanding-html

EU Alignment Consideration
This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU because Great Britain is not part of the EU's internal market. These measures are a consequence of no longer being an EU Member State, in line with international obligations that the UK shares with the EU, and will not undermine the prospects of an independent Scotland's potential EU accession.

The Statement of Common Understanding made by the UK Government and the EU on 19 May 2025 contains an intention to work towards establishing a Common Sanitary and Phytosanitary Area by way of a European Union–United Kingdom Sanitary and Phytosanitary Agreement (SPS Agreement) which should provide for dynamic alignment of the rules in Great Britain with EU law, but with a short list of limited exceptions to dynamic alignment[6]. The Scottish Government does not consider that the Regulations will undermine the prospects of working to establish any eventual European Union-United Kingdom Sanitary and Phytosanitary Agreement.

Consultation
To comply with the requirements of Article 144(7) of the Official Controls Regulation, before making these Regulations, the Scottish Ministers consulted such bodies or persons as appear to the Scottish Ministers to be representative of the interests likely to be substantially affected by these Regulations and such other bodies or persons as the Scottish Ministers considered appropriate.

The consultation responses show broad support for increasing flexibility in the siting of BCPs.

A full list of those consulted and who agreed to the release of this information will be released with the consultation report to be published on the Scottish Government website.

Impact Assessments
A Children's Rights and Wellbeing Impact Assessment (CRWIA) and Equality Impact Assessment (EQIA) have been completed on the draft SSI and are attached.

Financial Effects
A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is considered negligible as it will facilitate trade whilst also underpinning biosecurity controls.

Scottish Government
Agriculture and Rural Economy Directorate
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