EXPLANATORY MEMORANDUM TO

THE TRADE AND OFFICIAL CONTROLS (TRANSITIONAL ARRANGEMENTS FOR PRIOR NOTIFICATIONS) (AMENDMENT) REGULATIONS 2021

2021 No. 429

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 EU, effective official border controls continue to operate following the end of the Transition Period, governing imports to Great Britain of animals and animal products, plants and plant products, including food and other imports relevant to the agri-food chain – collectively known as sanitary and phyto-sanitary ("SPS") checks.

2.2 This instrument addresses deficiencies in the following EU Regulations and associated implementing legislation:

- Regulation (EU) 2017/625 ("the Official Controls Regulation") 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, as amended by Regulation 2020/1481:
- Regulation 2011/1197 ("the Trade in Animals and Related Products Regulation 2011") as amended by Regulations 2019/1488 and 2020/1462:
- Regulation S.S.I. 2012/177 ("the Trade in Animals and Related Products Regulation (Scotland) 2012") as amended by S.S.I. 2020/458; and
- Regulation 2020/1482 ("the Plant Health (Amendment etc.) (EU Exit) Regulations 2020").

2.3 The 2020 amending EU Exit Regulations created a 'single market' covering Great Britain and the Crown Dependencies, and allowed for a transitional period whereby import controls on EU goods are being introduced in phases over several months, rather than having taken effect immediately after the end of the Transition Period following exit from the EU.

2.4 This instrument addresses deficiencies specifically within the Regulations listed above, to change the date from which transitional prior notification requirements for products of animal origin and prescribed types of plant and plant products apply from 1 April 2021 to 31 July 2021; and to extend the duration of transitional provision relating to imports of plants, plant products and other objects into Great Britain from EU Member States (exemptions from requirements for imports to be accompanied by a phytosanitary certificate), amending the date on which that transitional provision expires from 31 March 2021 to 31 December 2021.

2.5 Correction of these deficiencies is necessary to ensure that transitional provisions relating to the phased introduction of import border controls processes continue to be

operable during and after the protracted period during which businesses and border operations continue to be adversely affected by the coronavirus pandemic.

Explanations

What did any relevant EU law do before exit day?

2.6 The EU Regulations form part of the EU Smarter Rules for Safer Food package of regulations. This package 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.

2.7 The EU Regulations, and the implementing legislation made under these Regulations, were directly applicable (i.e. national implementing legislation was not needed for them to take effect in UK law). The 2020 EU Exit Regulations make the EU Regulations operable in Great Britain following the end of the Transition Period on 31 December 2020.

Why is it being changed?

2.8 The instrument makes operability changes to the Regulations listed in Section 2.2 above, to ensure biosecurity border controls on EU imports are operable within Great Britain and deliver functioning sanitary and phytosanitary controls between Great Britain and the EU following the end of the Transition Period.

What will it now do?

2.9 This instrument will ensure the continued functioning of SPS controls between Great Britain and the EU following the end of the Transition Period.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland and Wales.

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 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement regarding Human Rights:

"In my view the provisions of the Trade and Official Controls (Transitional Arrangements for Prior Notifications) (Amendment) Regulations 2021 are compatible with the Convention rights.".

6. Legislative Context

6.1 The European Union Withdrawal Act 2018 (c. 16) ("the Withdrawal Act") converted and preserved EU law at the end of the Transition Period into domestic law ("retained EU law"). This instrument is made in exercise of the powers conferred by the Withdrawal Act, to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a) and (d)) arising from the withdrawal of the United Kingdom from the European Union).

6.2 If the relevant Regulations are not amended, they will contain inoperable rules that would prevent the UK government and the Devolved Administrations from being able to deliver workable SPS border controls. This instrument uses the powers in Section 8 of, and paragraph 21 of Schedule 7 to, the Withdrawal Act to correct these regulatory deficiencies, and continue with the transitional arrangements that postpone the implementation of operability amendments as follows:

- the Trade in Animals and Related Products Regulations 2011 (S.I. 2011/1197), the Trade in Animals and Related Products (Scotland) Regulations 2012 (S.S.I. 2012/177), and Official Controls Regulation (EU) 2017/625 (EUR 2017/625) respectively, to change the date from which transitional prior notification requirements for products of animal origin and prescribed types of plant and plant products apply, from 1 April 2021 to 31July 2021; and
- the Plant Health (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1482), to extend the duration of transitional provision relating to imports of plants, plant products and other objects into Great Britain from EU Member States (exemptions from requirements for imports to be accompanied by a phytosanitary certificate). The date on which that transitional provision expires is amended from 31 March 2021 to 31 December 2021.

7. Policy background

What is being done and why?

7.1 Statutory Instruments made and brought into force in late 2020 / early 2021, under Withdrawal Act powers, gave effect to the Government's decision to introduce checks on EU SPS imports in phases to commence following the end of the Transition Period on 31 December 2020. These included amendments to regulations governing Official Controls, Trade in Animals and Related Products, and Plant Health – including provisions to introduce a first tranche of border controls for some specific plants and animal product commodities, commencing 1 April 2021.

7.2 On 10 March 2021, the EU Exit Operations Cabinet Committee ("XO Committee") agreed that the original SPS border control transitional provisions in legislation will not operate in an appropriate way to complete the correction of the deficiency for which they were originally intended – that is, the need to introduce checks on EU imports in a way that is reasonable and proportionate to the capacity of businesses affected to meet these requirements, while they are dealing with the ongoing impacts of the coronavirus pandemic.

7.3 The original amending Regulations must therefore now be corrected, to enable them properly to give effect to the introduction of import controls for EU SPS goods as originally intended. This extension will allow businesses affected by the pandemic to familiarise themselves with the new SPS compliance requirements and IT systems, and enable workable migration from current systems. It will ensure that necessary

infrastructure and processes are in place at Border Control Points, further minimising the risk of any disruption.

7.4 If not amended immediately, from 1 April 2021 the law will require importers to comply with specific new control measures when importing certain animal and plant commodities. This instrument is therefore being made under the urgency provision, to enable it to be laid and brought into force by 31 March. Without this instrument, Government will be required to assert a policy decision (not to seek to operate the checks set out in legislation) which would have the effect of acting contrary to Government's previous legislated intent during the Transition Period, for which Parliament approval was secured.

7.5 There is also a risk that the relevant business sector will attempt to comply with control requirements because they are clearly set out in legislation, even if Government offers assurances that the control requirements will not be enforced.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under paragraph 21 of Schedule 7 in the Withdrawal Act 2018. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 Not applicable to this instrument.

10. Consultation outcome

10.1 Stakeholders have not been formally consulted: however, based on industry feedback since 1 January 2021 we expect these amendments will be received positively. This instrument makes technical operability amendments and not policy changes, representing an extension of previously introduced transitional provision.

10.2 The Scottish and Welsh Devolved Administrations have been consulted about the proposed amendments and are content.

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, and are developing an implementation plan and associated guidance for publication on GOV.UK, which will be available at 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 planned introduction of SPS borders checks later in 2021.

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 is made under the EU Withdrawal Act 2018, 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 Richard Moir, Deputy Director for EU/GB Imports, SPS Programme at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Gardiner of Kimble, Lord Gardiner, 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

Part 1

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), 9 and 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), 9 and 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), 9 and 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), 9 and 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), 9 and 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 exit 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), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and 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 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit 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 exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 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.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

1.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Trade and Official Controls (Transitional Arrangements for Prior Notifications) (Amendment) Regulations 2021 does no more than is appropriate".

1.2 This is the case because this instrument corrects deficiencies identified in operability amendments that arise from the UK's withdrawal from the EU, and ensure that the existing regimes for safeguarding UK biosecurity will continue to operate effectively after the end of the Transition Period. This is in line with government policy.

2. Good reasons

2.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

2.2 These are that there is real public concern about biosecurity and that the government should at least maintain the protections that currently exist.

3. Equalities

3.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble 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.

3.2 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to this instrument, I, Lord Gardiner of Kimble 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."

4. Urgency

4.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view by reason of urgency, it is necessary to make the Trade and Official Controls (Transitional Arrangements for Prior Notifications) (Amendment) Regulations 2021, without a draft of the instrument containing the regulations being laid before, and approved by a resolution of, each House of Parliament."

4.2 This is because of the explanations set out in sections 7.2 – 7.5 above.

5. Explanations

5.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.