

T: 0300 244 4000

E: scottish.ministers@gov.scot

Mr Finlay Carson MSP
Convener, Rural Affairs and Islands Committee
The Scottish Parliament
EDINBURGH
EH99 1SP

By email: rural.committee@parliament.scot

Copied to UKSIs@parliament.scot and

DPLR.Committee@parliament.scot

06 November 2023

Dear Finlay,

**EU EXIT LEGISLATION – PROTOCOL 2 WITH SCOTTISH PARLIAMENT
THE OFFICIAL CONTROLS (EXTENSION OF TRANSITIONAL PERIODS) (MISCELLANEOUS
AMENDMENTS) REGULATIONS 2023 (“Defra PH/046”)**

In accordance with the protocol (agreed in 2018; revised on 4 November 2020) between the Scottish Government and the Scottish parliament, I am writing to seek the approval of the Scottish Parliament to proposals by the Scottish Ministers to consent to the making of UK secondary legislation affecting devolved areas arising from EU Exit.

That protocol, as agreed between the Scottish Government and then Parliament, accompanied the letter from the former Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 4 November 2020 and replaced the previous protocol that was put in place in 2018.

I attach a Type 1 notification which sets out the details of Defra PH/046 which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in this SI. Please note, we are yet to have sight of the final SI and it is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

Defra PH/046 is subject to negative procedure and on current Defra plans is to be laid in the UK Parliament on 6 December 2023. I am pleased to say on this occasion the Scottish Parliament will have the 28 days to consider this notification.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee, and the Cabinet Secretary for Rural Affairs, Land Reform and Islands.

Yours sincerely,



LORNA SLATER

SI NOTIFICATION: SUMMARY

Title: The Official Controls (Extension of Transitional Periods)(Miscellaneous Amendments) Regulations 2023 (PH/046)

Proposed laying date at Westminster

Laying on 6 December 2023 – come into force 30 January 2024

Date by which Committee is to respond

By 5 December 2023

Power(s) under which SI is to be made

- Section 23(6) of the European Union (Withdrawal) Act 2018
- Articles 144(6) of, and paragraphs 2 and 3 of 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”);
- Paragraph 11A of Schedule 2 to the Trade in Animals and Related Products Regulations 2011

Categorisation under SI Protocol

Type 1

Purpose:

PH/046 makes the following provisions:

- It extends the transitional staging period end date from 31 January 2024 to 29 April 2024.
- It introduces the requirement for medium-risk plants and plant products entering Great Britain from the EU, Liechtenstein and Switzerland to be accompanied by a phytosanitary certificate upon entry.
- It introduces an exemption for medium-risk plants carried in passenger baggage and entering Great Britain from the EU, Liechtenstein and Switzerland from the requirement to be accompanied by a phytosanitary certificate upon entry, provided they are not to be used for professional or commercial purposes.
- It introduces the requirement for medium risk animal products entering Great Britain from EEA states, the Faroe Islands, Greenland or Switzerland to be accompanied by a health certificate.
- It removes the exemption from pre-notification of arrival for certain plants, plant products and animal products entering GB from the Republic of Ireland

Other information

These changes are required to meet the timetable detailed in the [Border Target Operating Model](#) (BTOM) as published on 29 August 2023. As a result of the proposed new BTOM, consequential changes will be required to the Scottish Statutory Instrument the Plant Health (Import Inspection Fees) (Scotland) Regulations 2014, which sets out the charges for import inspections. The aim is to put these forward for scrutiny in February 2024 to meet phase 2 delivery of the BTOM.

SG Policy contact:

Plant Health: Yvonne Hay (Yvonne.Hay@gov.scot)

Animal Health: Ian Cox (Ian.Cox@gov.scot)

NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Official Controls (Extension of Transitional Periods) (Miscellaneous Amendments) Regulations 2023 – PH/046

Is it Type 1 or Type 2 notification.

Type 1

A brief overview of the SI

The Official Controls (Extension of Transitional Periods) (Miscellaneous Amendments) Regulations 2023 (PH/046). It makes provision regarding the Transitional Staging Period for sanitary and phytosanitary controls on animals, animal products, plants and plant products entering Great Britain from the EU and certain other third countries

The SI is made in exercise of powers conferred by:

- a) Section 23(6) of the European Union (Withdrawal) Act 2018
- b) Articles 144(6) of, and paragraphs 2 and 3 of 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”)
- c) in relation to England only, paragraph 11A of Schedule 2 to the Trade in Animals and Related Products Regulations 2011

The instrument will extend the end date of the Transitional Staging Period to 29 April 2024 and introduce increased sanitary and phytosanitary controls on animal products, plants and plant products entering Great Britain from the EU and certain other third countries from 31 January 2024. In so far as the instrument extends to Scotland, it will make provision which relates to devolved matters.

This instrument is not relevant to the Scottish Government’s policy to maintain alignment with the EU because it concerns transitional measures regarding sanitary and phytosanitary controls on goods entering Great Britain from the European Union following Great Britain no longer being part of the EU’s internal market. These measures will not create any barriers to re-entry to the European Union.

The SI is subject to negative procedure and is to be laid on 6 December 2023 and to come into force on 30 January 2024.

These changes are required to meet the timetable detailed in the BTOM. As a result of these amendments, consequential changes will be required to the Scottish Statutory Instrument the Plant Health (Import Inspection Fees) (Scotland) Regulations 2014, which sets out the charges for import inspections. The aim is to put this forward for scrutiny in February 2024. Equivalent amendments to those that will be made by this SI in relation to England only, regarding an exemption for meat preparations from certain third countries to be deep frozen, will be made by SSI.

Summary of the proposals:

The provisions of PH/046 implement aspects of the UK Border Target Operating Model (BTOM)¹ relating to Plant and Animal Health and bring to an end certain transitional arrangements for sanitary and phytosanitary (SPS) controls at the border.

PH/046 makes the following provisions which will extend to Scotland:

- It extends the Transitional Staging Period end date from 31 January 2024 to 29 April 2024.
- From 31 January 2024 to the end of the Transitional Staging Period
 - It introduces the requirement for medium-risk plants and plant products entering Great Britain from the EU, Liechtenstein and Switzerland to be accompanied by a phytosanitary certificate upon entry, unless they are exempt (refer to Annex 1).
 - It introduces an exemption for these plants (in Annex 1) carried in passenger baggage and entering Great Britain from the EU, Liechtenstein and Switzerland to not require to be accompanied by a phytosanitary certificate upon entry, provided they are not to be used for professional or commercial purposes.
 - It introduces the requirement for medium risk animal products entering Great Britain from EEA states, the Faroe Islands , Greenland or Switzerland to be accompanied by a health certificate for third country imports.
 - It removes the exemption from prenotification of arrival for certain plants, plant products and animal products entering Great Britain from the Republic of Ireland, unless the goods are qualifying Northern Ireland goods moving directly through the Republic of Ireland to Great Britain.

PH/046 will also make provision in England only to extend to 29 April 2024 an exemption for meat preparations from certain third countries to be deep frozen.

Background

Transitional Staging Period

The EU (Withdrawal) Act 2018 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 the Transitional Staging Period (TSP) which has been used to stagger the introduction of full import controls on EU imports into Great Britain, to reflect the similar standards of SPS controls within the EU and to enable trade and infrastructure to build capacity to deliver these checks. Provision was made for the end date of the TSP to be changed by statutory instrument. Several extensions of the TSP have been implemented by both UK and Scottish Statutory

¹ [The Border Target Operating Model: August 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/the-border-target-operating-model-august-2023)

Instruments. The most recent extension was implemented in Scotland by the Official Controls and Import Conditions (Transitional Periods) (Miscellaneous Amendment) (Scotland) Regulations 2022 and expires on 31 January 2024.

A decision was recently taken by UK Government to suspend further introduction of border controls until 30 April 2024, at which point the second stage of the BTOM would be introduced and the requirement for checks at border control posts under the Official Controls Regulation will come into effect. This SI therefore further amends the previous intended timetable with the transitional staging period extended until the end of the day on 29 April 2024.

Transitional border control arrangements introduced post-IP Completion Day

Under Articles 72-74 of the retained Plant Health Regulation (EU 2019/2031) and Annex 11 to the retained Phytosanitary Conditions Regulation (EU 2019/2072), plants and plant products which are introduced into Great Britain from a third country must be accompanied by a phytosanitary certificate upon entry. However, to ensure the continued functioning of plant health SPS controls within GB and between GB and the EU at the end of the Transition Period, provisions made under the Plant Health (Amendment Etc.) (EU Exit) Regulations 2020 (S.I 2020/1482) (“the 2020 Regulations”) which came into force on 1 January 2022 provided that certain plants, plant products and other objects entering Great Britain from the EU, Liechtenstein or Switzerland, have not needed to be accompanied by a phytosanitary certificate. These are medium-risk goods listed in Schedule 2 of the 2020 Regulations.

Under regulation 13 of the Trade in Animals and Related Products (Scotland) Regulations 2012 animals and animal products entering Great Britain from a third country required to be accompanied by the relevant health certificate for that animal or animal product. At the end of Transition Period provision was made in schedule 5 of the Trade in Animals and Related Products (Scotland) Regulations 2012 to require a health certificate only for live animals and germinal products, with other animal products (products of animal origin for human consumption and animal by-products) requiring to be accompanied by commercial documents identifying the product, and its premises of origin and destination.

Since the end of the Transition Period requirements have been introduced for the pre-notification of animals, animal products, plants, plant products and high-risk food and feed arriving into GB from the EU before arriving into GB. When pre-notification requirements were introduced on 1 January 2022 for products of animal origin for human consumption, and certain plants, plant products and animal by-products that were not already subject to pre-notification requirements, a temporary exemption from the pre-notification requirement was provided for movements of these goods from the Republic of Ireland, where the goods were produced or processed in Northern Ireland or the Republic of Ireland.

In implementing the first stage of the BTOM, the changes being made by this SI bring these aspects of the transitional arrangements to an end. From 30 January 2024, imports of medium-risk plants and plant products entering GB from the EU, Liechtenstein or Switzerland, will be required to be accompanied by a phytosanitary certificate. An exception is being made for medium-risk goods carried in passenger baggage. Similarly imports of medium-risk products of animal origin and animal by-products entering GB from an EEA state, the Faroe Islands, Greenland or Switzerland will require to be accompanied by a health certificate. Additionally, the pre-notification exemption for certain goods entering GB from the Republic Of Ireland will also end whilst maintaining a carveout for QNIGs transported directly from

Northern Ireland via the Republic into Great Britain.

Details of the provisions that Scottish Ministers are being asked to consent to

- The Official Controls (Extension of Transitional Periods) Regulations 2021

Regulation 2 of the Official Controls (Extension of Transitional Periods) Regulations 2021 which appoints the end date of the TSP in paragraph 2 of Annex 6 to Regulation (EU) 2017/265 will be amended from 31 January 2024 to 29 April 2024. **This will enable the second stage of the Border Targeted Operating Model to begin from 30 April 2024.**

Animal health

- Trade in Animals and Related Products (Scotland) Regulations 2012

Schedule 5 of the Trade in Animals and Related Products (Scotland) Regulations 2012 which makes provision for derogations and modifications to requirements for third country imports during the Transitional Staging Period will be amended to:

- introduce requirements for health certificates for the following products of animal origin for human consumption:
 - infant and follow-on formulas, baby food and food for special medical purposes.
 - not live or not viable fishery products from species other than *Scombridae*, *Clupeidae*, *Engraulidae*, *Coryfenidae*, *Pomatomidae*, and *Scombrosidae* families
 - products that are not shelf stable at ambient temperatures
 - products not securely packaged in clean containers
- introduce requirements for health certificates for animal by-products to be listed in a new schedule to be inserted into the Regulations (listed at Annex 2 below)

Plant health

- The Plant Health (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1482) (“the 2020 Regulations”)

Regulation 52 of the 2020 Regulations will be amended to end the exemption from the requirement for a phytosanitary certificate to accompany medium risk plants, plant products and other objects. From 31 January 2024, plants, plant products and other objects imported into GB from an EU Member State, Liechtenstein or Switzerland will require a phytosanitary certificate unless now exempted under regulation 52 of the 2020 Regulations. These exemptions are for: (i) plants forming part of a traveller’s personal luggage that are not to be used for professional or commercial purposes; (ii) plants reclassified as low-risk and specified in a new Schedule inserted into the 2020 Regulations (listed at Annex 1 below); (iii) plant products and other objects despatched from their point of origin to enter Great Britain with a certificate where they do so before the new requirement for a phytosanitary certificate comes into

force.

Both Animal and Plant Health

Part 2 of Annex 6 to Regulation (EU) 2017/625 the Official Control Regulations will be amended to end the temporary arrangement which allowed certain animal products, plants and plant products from the Republic of Ireland to enter GB without requiring prior notification of arrival. Qualifying Northern Ireland Goods will be able to continue to move to GB directly via the Republic of Ireland without pre-notification requirements.

Consultation

In accordance with Article 144(7) of Regulation (EU) 2017/625, a consultation was undertaken by Defra on behalf of all GB administrations, which included all registered Scottish importers on the changes to health certificate requirements being introduced from 31 January 2024 transitional staging period being extended from 31 January 2024 to 29 April 2024 and the changes to pre-notification for goods arriving directly to Great Britain from Republic of Ireland.

Other information

This SI does not transfer any legislative functions.

The World Trade Organisation has been notified.

The amendment of the TSP end date, from 31 January 2024 to 29 April 2024, so that the second stage of the BTOM can begin from 30 April was indicated in the final published BTOM.

Does the SI relate to a common framework or other scheme?

Provisional Plant Health Framework
Provisional Animal Health and Welfare Framework

A note of other impact assessments, (if available)

An impact assessment has not been produced for this instrument, as no or no significant impact on the private or voluntary sector is foreseen.

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation.

In light of the UKG's publication on the BTOM, Scottish Ministers are of the opinion it would be appropriate to introduce these provisions a GB wide basis, as it allows the Scottish Government to continue to work with other UK Administrations to finalise and implement the objectives of BTOM, to ensure a coherent, effective and efficient system of controls can be introduced, across GB thereby enhancing biosecurity. It also provides clarity to the importers of both animal and plant products avoiding any disparity at the borders within GB.

Intended laying day (if known) of instruments likely to arise.

PH/046 will be made using the negative procedure and it is intended to be made on 6

December 2023 to come into force on 30 January 2024. This will meet first phase of the transition timelines as set out in the BTOM.

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposals to consent, why not?

N/A

Information about any time dependency associated with the proposal.

N/A

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal.

None.

Any significant financial implications?

No significant financial implications.

Transition provision: List of Plant that are exempt from phytosanitary certificates (Article 72(1) of the Plant Health Regulations 2016/2031.

<i>Column 1</i> <i>Category of plants</i>	<i>Column 2</i> <i>Description of plants</i>	<i>Column 3</i> <i>Corresponding entry number in the table in Part A of Annex 11 to the Phytosanitary Conditions Regulation⁽¹⁾ to the category of plants in Column 1 of this table</i>
Root and tubercle vegetables	<p>Carrots, turnips, salad beetroot, salsify, celeriac, radishes and similar edible roots, fresh or chilled.</p> <p>Other root and tubercle vegetables, fresh or chilled.</p> <p>Manioc, arrowroot, salep, Jerusalem artichokes, sweet potatoes and similar roots and tubers with high starch or inulin content, fresh, chilled, not frozen or dried, not sliced or in the form of pellets.</p> <p>Ginger, saffron, turmeric (curcuma), and other spices, in the form of root or tubercle plant parts, fresh or chilled.</p> <p>Sugar beet, not ground, fresh or chilled.</p> <p>Chicory roots, fresh or chilled.</p> <p>Other root and tubercle vegetables, fresh or chilled.</p> <p>Swedes, mangolds, fodder roots, similar forage products, not in the form of pellets, fresh or chilled.</p>	5

Parts of plants, other than fruit and seeds of:

<i>Zea mays</i> L.	Other vegetables, fresh or chilled: Sweetcorn	8
Leafy vegetables of <i>Apium graveolens</i> L., <i>Eryngium</i> Tournier ex Linnaeus, <i>Limnophila</i> R.Br. and <i>Ocimum</i> L.	Other vegetables, fresh or chilled. Parts of plants (other than fruit and seeds), of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purposes, fresh, chilled, crushed or powdered. Vegetable products not elsewhere specified or included, fresh or chilled.	10
Leaves of <i>Manihot esculenta</i> Crantz	Leaves of cassava (<i>Manihot esculenta</i>), fresh or chilled. Vegetable products of cassava (<i>Manihot esculenta</i>), not elsewhere specified or included, fresh or chilled.	11
Fruits of: <i>Momordica</i> L. and Solanaceae Juss.	Tomatoes, fresh or chilled. Other vegetables, of Solanaceae, fresh or chilled. Other fruit, fresh or chilled.	19

<p><i>Carica papaya</i> L., <i>Cydonia</i> Mill., <i>Fragaria</i> L., <i>Malus</i> Mill., <i>Persea</i> <i>americana</i> Mill., <i>Prunus</i> L., <i>Pyrus</i> L., <i>Ribes</i> L., <i>Rubus</i> L., <i>Syzygium</i> Gaertn., <i>Vaccinium</i> L. and <i>Vitis</i> L.</p>	<p>Avocados, fresh or chilled.</p> <p>Grapes, fresh or chilled.</p> <p>Papaws (papayas) fresh or chilled.</p> <p>Apples, pears and quinces, fresh or chilled.</p> <p>Apricots, cherries, peaches (including nectarines), plums and sloes, fresh or chilled.</p> <p>Strawberries, fresh or chilled.</p> <p>Raspberries, blackberries and loganberries, fresh or chilled.</p> <p>Black, white or red currants and gooseberries, fresh or chilled.</p> <p>Cranberries, bilberries, and other fruit of the genus <i>Vaccinium</i>, fresh or chilled.</p> <p>Other, fresh or chilled.</p>	<p>20"</p>
--	--	------------

Animal by-products and derived products requiring a health certificate on importation

1. Column 1	3. Column 2	5. Column 3
2. Product	4. Raw materials in Regulation (EC) 1069/2009	6. Intended use
Animal by-products for the use specified in column 3	i) Category 3 materials referred to in Article 10(a) to (m)	The manufacture of petfood other than raw petfood
Animal by-products for the use specified in column 3	ii) Category 1 materials referred to in Article 8(c) i) Category 3 materials referred to in Article 10(a) to (m)	The manufacture of derived products for uses outside the feed chain
Apiculture by-products	ii) in the case of fur for the manufacture of derived products, Category 3 materials referred to in Article 10(n) Category 3 materials referred to in Article 10 (e)	Apiculture
Untreated blood and blood products from Equidae Blood products, excluding from equidae	Category 3 materials referred to in Article 10(a), (b), (d) and (h) Category 1 material referred to in Article 8(c) and (d) and Category 3 material referred to in Article 10(a), (b), (d) and (h)	Other than as feed material For the manufacture of derived products for uses outside of the feed chain for farmed animals
Blood products	Category 3 materials referred to in Article 10 (a) and (b)(i)	Feed material
Collagen	Category 3 materials referred to in Article 10(a), (b), (e), (f), (g), (i) and (j)	Feed material
Colostrum and colostrum products from bovine animals	Category 3 materials from live animals that did not show any signs of disease transmissible through the colostrums to humans or animals	Feed material
Dicalcium phosphate	Category 3 materials referred to in Article 10(a), (b), (d),(e), (f), (g), (h), (i), (j) and (k)	Feed material
Dog chews	Materials referred to in Article 35(a)(i) and (ii)	Any
Egg products	Category 3 materials referred to in Article 10(e), (f) and (k)(ii).	Feed material
Fat derivatives	Category 3 materials other than materials referred to in Article 10(n), (o) and (p)	Feed material
Flavouring innards	Materials referred to in Article 35(a)	Manufacture of petfood
Fish oil	Category 3 materials referred to	Feed material

Untreated game trophies or other preparations from birds and ungulates consisting of entire anatomical parts	in Article 10(e), (f), (i) and (j) Category 2 materials referred to in Article 9, point (f) derived from wild animals not suspected of being infected with a disease communicable to humans or animals and Category 3 material referred to in Article 10(a), (b)(i), (iii) and (v) and (n)	Other than as feed material
Gelatine	Category 3 materials referred to in Article 10(a), (b), (e), (f), (g), (i) and (j),	Feed material
Hydrolysed protein	Category 3 materials referred to in Article 10(d), (h) and (k).	Feed material
Milk, milk-based products and milk-derived products	Category 3 materials referred to in Article 10(e), (f) and (h)	Feed material
Pig bristles	Category 3 materials referred to in Article 10 (b)(iv)	Any
Processed animal protein obtained from farmed insects	Category 3 materials referred to in Article 10(l)	Feed material, other than petfood
Processed animal protein other than those derived from farmed insects, including mixtures and products other than petfood containing such protein	Category 3 materials referred to in Article 10(a), (b), (d), (e), (f), (h), (i), (j), (k), (l) and (m)	Other than feed material
Raw petfood	Materials referred to in Article 35(a)(iii)	Petfood
Rendered fats	Category 1 materials referred to in Article 8, points (b), (c) and (d), Category 2 materials referred to in Article 9, points (c), (d) and (f)(i) and Category 3 materials referred to in Article 10, other than in points (c) and (p)	Feed material
Trade samples		Any
Tricalcium phosphate	Category 3 material or products which are derived from such animal by-products, other than materials referred to in Article 10(m), (n), (o) and (p)	Feed material
Fresh or chilled / untreated hides and skins of ungulates	Category 3 materials referred to in Article 10 (a) and (b)(iii)	Any
