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20 May 2024

Dear Finlay,

**THE OFFICIAL CONTROLS (AMENDMENT) REGULATIONS 2024 – DEFRA OFC/017/R
EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT**

I am writing in relation to the protocol on obtaining 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 then 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 the SI 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 yet 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 it is in keeping with the terms of this notification.

I should also add that whilst the instrument is scheduled to be laid in draft in the UK Parliament in the week commencing 3 June, there is an undertaking that a debate will not be scheduled in the UK Parliament until the Scottish Parliament has been afforded the full 28 days to consider this notification.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

I look forward to hearing from you within 28 days of the dated notification.

Yours sincerely,



MAIRI GOUGEON

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NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Official Controls (Amendment) Regulations 2024– “Defra OFC/017/R”

Is the notification Type 1 or Type 2

Type 1

A brief overview of the SI

The purpose of this instrument is to protect biosecurity and support trade between Great Britain (GB) and third countries by ensuring that Sanitary and Phytosanitary (SPS) controls can be applied to goods entering GB, in response to changing levels of risk to plant, animal and public health through further statutory instruments.

This instrument forms part of [The Border Target Operating Model \(BTOM\)](#) implementation (which set out UK Government plans to implement a global, risk based approach for SPS controls on imports from the United Kingdom’s trading partners), and focusses on making amendments to official controls on animals and goods entering Great Britain in Chapter 5 of Title 2 of Regulation (EU) 2017/625 (the Official Controls Regulation or "OCR") and other direct assimilated law governing the import conditions for animals and animal products entering Great Britain.

This instrument concerns measures regarding sanitary and phytosanitary checks and controls on animals, plants and plant products, and other goods entering Great Britain. In so far as it applies to the prohibition and regulation of movement into Scotland of food, animals, animal products, plants and plant products, animal feeding stuffs, fertilisers and pesticides it will relate to devolved matters.

This instrument is not relevant to the Scottish Government’s policy to maintain alignment with the EU because Great Britain is no longer part of the EU’s internal market. These measures are required as a consequence of no longer being an EU Member State, in line with international obligations we share with the EU, and the operation of UK internal market established by the United Kingdom Internal Market Act 2020. These measures will not create any barriers to re-entry to the European Union.

OFC/017/R is made in exercise of powers contained in sections 14(1), (2), (3), (4) and (7), 15(1) and 20(1) of the Retained EU Law (Revocation and Reform) Act 2023.

OFC/017/R is subject to affirmative procedure and is to be laid in draft on or around 5 June, and is to come into force on 23 July 2024.

Whilst the instrument is scheduled to be laid in draft in the week commencing 3 June, there is an undertaking from the UK Government that a debate will not be scheduled in the UK Parliament until the Scottish Parliament has been given 28 days to consider the notification.

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

Summary of the proposals:

The current regime regarding official controls on animals and goods entering Great Britain to deliver the BTOM is under [Regulation \(EU\) 2017/625](#) (the Official Controls Regulation or OCR) as it has been amended by the Official Controls (Extension of Transitional Periods)

(Miscellaneous Amendments) Regulations 2024¹, Official Controls (Fees and Charges) (Amendment) Regulations 2024², The Plant Health (Fees) (England) and Official Controls (Frequency of Checks) (Amendment) Regulations 2024 (S.I 2024/557), The Plant Health (Import Inspection Fees) (Scotland) Amendment Regulations 2024 (SSI 2024/123) and The Official Controls (Miscellaneous Amendments) Regulations 2024³.

To ensure a legislative framework is in place to achieve the full BTOM, the instrument will amend assimilated law notably the OCR and other relevant legislation. This instrument uses powers conferred by the Retained EU Law (Revocation and Reform) Act 2023⁴ to update or revoke and replace provisions in the OCR and other relevant legislation to:

- Provide the legislative powers for further aspects of the BTOM to be delivered;
- Make other changes to the rules on official controls to deliver aspects of the BTOM;
- Ensure that certain import conditions on animals and animal products can be updated administratively in response to risk

In so far as it extends to Scotland, the SI will make the following provisions:

Provide the legislative powers to deliver further aspects of the BTOM

The majority of changes made by the instrument do not directly implement the BTOM, but, rather, ensure that the existing regulation-making powers are updated to enable the policies underpinning the BTOM to be delivered in the longer term. Amendments are required to provide the legislative basis to introduce aspects of the BTOM which have not yet been delivered. The following amendments will be made to the OCR to revoke and replace existing provision to make regulations which are exercisable, in relation to Scotland, by Scottish Ministers, or the Secretary of State with Scottish Ministers' consent:

- The existing power in Article 48 to establish by regulations the cases, and conditions under which, categories of animals and goods are to be exempt from official controls at border control posts, will be revoked and replaced with a power to establish by regulations the cases, and conditions under which, similar categories of animals and goods as currently set out in Article 48(2), may be exempted from official controls and other official activities.
- The existing power in Article 49(4) to make regulations on the practical arrangements for the presentation of consignments, will be replaced with a power which includes making provision on where consignments must be presented. The requirement in Article 49(1) that official controls must always be carried out on consignments upon arrival from a third country will be removed, while keeping the requirement that they be carried out a border control post.
- The existing power in Article 51(1)(e) to make regulations regarding transhipped consignments and the transit of consignments will be broadened to allow regulations to establish the cases, and the conditions under which, derogations from any of the rules on official controls and other official activities on animals and goods may apply.
- The existing power in Article 53(1)(a) and (e) will be broadened to allow regulations to establish the cases, and conditions under which identity and physical checks may take place elsewhere than at a border control post or control point, and to allow

1 S.I. 2024/20

2 S.I. 2024/547

3 S.I. 2024/541

4 2023 c. 28

documentary checks to be performed otherwise than at a border control post, before the consignment enters Great Britain, or by automated means.

- The existing power in Article 54(3) and (4) will be broadened to allow regulations to make provision for the frequency rates, or a range of frequency rates, for documentary checks as well as identity and physical checks. Regulations will also be able to lay down rules on the frequency of checks on plants for planting. The requirement for all animals and goods to be subject to documentary checks will be removed.
- The existing power in Article 64(2) to make provision for the cases where, and conditions under which a border control post may be situated at a distance from a point of entry will be broadened so that this power is no longer restricted to circumstances where there are specific geographical constraints.
- The existing power in Article 90 to make regulations about the issue of official certificates will be broadened to allow provision to be made about any model official certificates and rules for their issue, and to make provision for the issue of digital certificates and unique digital identifiers.
- The existing power in Article 126 to make regulations establishing additional conditions for the entry into Great Britain of animals and goods will be broadened so that it may be exercised to ensure compliance with animal health, animal by-product, plant pest and plant protection product requirements
- The existing power in Article 139 to make regulations about applicable penalties will be broadened to allow provision to be made for penalties for infringements of any of the rules which official controls and official activities concern; to make provision for civil sanctions; and to provide for appeals against decisions on imports or enforcement action taken.

Further instruments are anticipated exercising the amended powers at a later date.

These powers may be used, for example, to:

- exempt animals and goods categorised as low risk from checks and certification requirements, under appropriate conditions, which may include schemes for trusted traders, surveillance audits, and for the risk of a product to be determined administratively in accordance with criteria set in regulations. For example, this would allow rapid changes to rules for bringing or sending animal and goods into Great Britain for personal consumption or use, in response to biosecurity or food safety risks. This would allow the appropriate authority to determine administratively which countries or products are deemed of acceptable risk and therefore subject to 'reduced controls' for these purposes.
- facilitate electronic and/or digital import documentation to enable remote documentary checks and access to official documentation using a unique digital identifier, such as the issue of QR codes, linked to consignments by competent authorities.
- provide flexibility on the location and timing of documentary checks, and on the location of identity and physical checks, so that these may take place away from a border control post.
- to allow the frequency of documentary checks to be based on risk.
- to allow reduced controls for goods from the European Union intended for Northern Ireland, in line with the Windsor Framework, and to regulate transits to provide for reduced checks for goods for which GB is not their end destination.

Make other changes to the rules on official controls to deliver aspects of the BTOM

OFC/017/R will update or revoke and replace other provisions of the OCR to make changes to the rules on official controls to deliver aspects of the BTOM, including to reflect the changes to regulation-making powers above.

The new provisions will:

- Amend Chapter 4 of Title 2 of the OCR to allow official plant health officers designated by a competent authority to carry out sampling, analyses, tests and diagnoses, as well as official laboratories.
- Amend Articles 44 and 45 to clarify that animals and goods not subject to official controls at a border control post, may be subject to official controls at a broader range of locations, and that, where official controls are carried out, documentary checks may take place on a risk basis.
- Amend Article 47 so that while official controls must, unless exempted, be carried out at a border control post, it need not be on first arrival of the consignment in Great Britain.
- Amend Article 50 to provide that official certificates may be in digital form and competent authorities may issue unique digital identifiers linked to a consignment.
- Amend Article 56 so that a common health entry document may be in digital form.
- Amend Article 57 so actions may be taken, and notifications made to a competent authority for the performance of official controls on goods falling within that Article, other than the competent authority at a BCP.
- Amend Articles 80 and 81 to allow competent authorities to collect fees and charges to cover the costs of any activities carried out under the OCR, and for any costs borne by them to be a basis for the fees and charges.
- Amend Article 83 to allow competent authorities to publish details of how and when charges are to be paid, make different provision for payment by operators who have previously failed to pay charges, and to recover unpaid fees or charges as a civil debt.
- Amend Article 127 to require third countries to provide, without delay, up-to-date lists of approved exporting establishments in their territories.

Consequential amendments reflecting the changes to the OCR are also made to assimilated law instruments made under the OCR (Commission Delegated Regulation (EU) 2019/1602 and Commission Implementing Regulation (EU) 2019/2130) as well as to the Trade in Animals and Related Products (Scotland) Regulations 2012, and to the equivalent regulations in England and in Wales.

Ensuring that certain import conditions for animals and animal products can be updated administratively in response to risk

Import conditions for various animals and animal products are set out in direct assimilated law instruments. The instrument amends these instruments to provide for the Secretary of State, with the consent of the Scottish Ministers (in relation to Scotland) and the Welsh Ministers (in relation to Wales), to change certain conditions currently set out in these instruments by specifying the change in a document published for that purpose, in order to protect public and animal health in the United Kingdom, such as following an animal disease outbreak or food safety incident overseas. The instruments this will apply to are:

- Commission Decision 2006/168/EEC (bovine embryos) to allow additional conditions to be imposed regarding embryo collection or production teams;
- Commission Decision 2007/777/EC (certain meat products) to allow conditions to be imposed regarding particular third countries or parts of third countries;
- Commission Regulation (EC) 798/2008 (poultry and poultry products) and Commission Regulation (EU) 206/2010 (certain animal and fresh meat) to allow additional required guarantees or specific conditions to be imposed in this way;
- Commission Decision 2010/472/EU (ovine and caprine semen, ova and embryos) to allow conditions to be imposed on consignments of ova and embryos from a third country listed in Annex 3;
- Commission Regulation (EU) 605/2010 (milk and dairy products) to allow import requirements to be set out in model health certificates;
- Commission Regulation (EU) 142/2011 (animal by-products and derived products) to provide that the third countries authorised to import products are to be published by the appropriate authority (either Scottish Ministers, or the Secretary of State with Scottish Ministers' consent);
- Commission Decision 2011/163/EU (approved plans for monitoring substances and residues in animals and animal products) to remove the current restrictions on the relevant third countries who may submit plans, and the relevant animals and animal products for which those plans are approved;
- Decision 2011/630/EU (bovine semen) and Commission Implementing Decision 2012/137/EU (porcine semen) to allow conditions to be specified in relation to third countries or parts of a third country;
- Commission Implementing Regulation (EU) 2018/659 (equidae and equidae semen, ova and embryos) to allow a country to be assigned to a sanitary group and publish the guarantees that must be complied with by countries belonging to that sanitary group; and
- Commission Implementing Regulation (EU) 2019/626 (certain animals and goods for human consumption) to allow for the setting or lifting of authorisations to import from currently authorised third countries, or territories or parts of them.

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

Provisional Plant Health Framework

Provisional Animal Health and Welfare Framework

Summary of stakeholder engagement/consultation

A period of engagement on the draft BTOM ran from 5 April 2023, for 6 weeks. The feedback from this engagement was collated, considered and, where appropriate, adopted for the final BTOM publication on 29 August 2023.

This was followed by a 12-day stakeholder engagement exercise which took place in the run up to the introduction of the second major BTOM milestone on 30 April. This exercise requested the views of over 50 key stakeholders in the SPS sector on the proposed legislative changes within The Official Controls (Miscellaneous Amendments) Regulations 2024 (S.I. 2024/541).

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

The SI takes account of devolved competence.

Bearing in mind that this legislation is an integral part of ongoing implementation of the BTOM Scottish Ministers consider that it would be appropriate for these provisions to be enacted on 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 the BTOM.

A note of other impact assessments, (if available)

There is no, or no significant, impact on the public sector.
A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

Intended laying date (if known) of instruments likely to arise

OFC/017/R will be made using the affirmative procedure and it is intended to be made on or around 5 June 2024 and will come into force on 23 July 2024.

If the Scottish Parliament does not have 28 days to scrutinise Scottish Ministers' proposal 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 with these be regulated and monitored post-withdrawal.

None.

Any significant financial implications?

No significant financial implications.

SI NOTIFICATION: SUMMARY

Title: The Official Controls (Amendment) Regulations 2024 – “Defra OFC/017/R”
Proposed laying date at Westminster: to be laid in draft on around 5 June 2024
Date by which Committee is to respond: Within 28 days of the dated notification
Power(s) under which SI is to be made: This SI is subject to affirmative procedure and is made in exercise of powers contained in sections 14(1), (2), (3), (4)(a), (b), (e) and (7), 15(1) and 20(1) of the Retained EU Law (Revocation and Reform) Act 2023.
Categorisation under SI Protocol: Type 1
Purpose: This instrument concerns measures regarding sanitary and phytosanitary checks and controls on animals, plants and plant products, and other goods entering Great Britain. These measures are required as a consequence of no longer being an EU Member State, in line with international obligations we share with the EU, and the operation of the UK internal market established by the United Kingdom Internal Market Act 2020.
Other information To ensure a legislative framework is in place to achieve the full BTOM, the instrument will amend assimilated law notably Regulation (EU) 2017/625 (the Official Controls Regulation or OCR) and other relevant legislation. This instrument uses powers conferred by the Retained EU Law (Revocation and Reform) Act 2023 to update or revoke and replace provisions in the OCR and other relevant legislation to: <ul style="list-style-type: none">• Provide the legislative powers for further aspects of the BTOM to be delivered;• Make other changes to the rules on official controls to deliver aspects of the BTOM; and• Ensure that certain import conditions on animals and animal products can be updated administratively in response to risk.
SG Policy contact: Ian Cox, Agriculture and Rural Economy Directorate, Animal Health and Welfare Division ian.cox@gov.scot