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Convener, Rural Affairs and Islands Committee
The Scottish Parliament
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19 January 2024

Dear Convener,

**EU EXIT LEGISLATION – PROTOCOL 2 WITH SCOTTISH PARLIAMENT
DEFRA OFC/016 - THE OFFICIAL CONTROLS (FEES AND CHARGES) (AMENDMENT)
REGULATIONS 2024 (“Defra OFC/016”)**

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 OFC/016 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 OFC/016 is subject to affirmative procedure and on current Defra plans is to be laid in the UK Parliament on 26 February 2024. 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,

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

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NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Official Controls (Fees and Charges) (Amendment) Regulations 2024 (Defra OFC/016)

Is the notification Type 1 or Type 2

Type 1

A brief overview of the SI (including reserved provision).

The purpose of this instrument is to facilitate the implementation of the Border Target Operating Model (“BTOM”)¹ as published by the UK Government in August 2023. The instrument will enable fees and charges for official controls to reflect changes to the sanitary and phytosanitary (“SPS”) border official controls regime as set out in the BTOM. In so far as the provisions extend to Scotland, the provisions relate to devolved matters, and the consent of the Scottish Ministers is sought for their inclusion in the instrument.

This instrument is not relevant to the Scottish Government’s policy to maintain alignment with the EU because it concerns charging measures under the new SPS border official controls regime under the BTOM. These measures will not create any barriers to re-entry to the European Union.

The SI is made in exercise of powers conferred by section 14(2) and (3) of the Retained EU Law (Revocation and Reform) Act 2023.

The proposed instrument is expected to be laid before the UK Parliament on 26 February 2024 and to come into force on 30 April 2024.

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

The principal legislation governing fees and charges for controls on movement into Great Britain of SPS goods is set out in assimilated law, namely Chapter 6 of the Official Controls Regulation (Regulation (EU) 2017/625). The Official Controls Regulation sets out official controls for SPS goods and how these should be delivered, including provisions for the calculation and payments of fees and charges for official controls. The instrument revokes and replaces certain provisions in Chapter 6 of Regulation (EU) 2017/625 (“the Official Controls Regulation”) throughout Great Britain, with minor amendments to the Trade in Animals and Related Products Regulations 2011² (in England) and the Trade in Animals and Related Products (Wales) Regulations 2011³ (in Wales), which are necessary (but which are not necessary in Scotland) to reflect these changes. The changes are intended to facilitate flexibility in the application of fees and charging requirements across all competent authorities (“CAs”) when conducting official controls on SPS goods arriving in Great Britain; thereby, safeguarding the financial sustainability of

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)

² S.I. 2011/1197

³ S.I. 2011/2379 (W. 252)

CAs and Government owned Border Control Posts (“BCPs”), and enabling the application of risk factors set out in the BTOM.

Summary of the proposals

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

- It revokes and replaces the duty to collect fees and charges for official controls at border control posts (BCP) and controls points (CP) in Article 79(1) of the Official Controls Regulation, with a duty to collect fees and charges for official controls on animals and goods entering Great Britain. This will enable fees and charges to be levied away from a BCP or CP. Under the BTOM, not all consignments will be required to attend a BCP. Therefore, CAs will need the flexibility to levy fees and charges digitally and without the consignment being physically at the BCP.
- It will revoke and replace the circumstances in Article 79(3) of the Official Controls Regulation under which a competent authority may reduce charges or waive them altogether, to allow CAs to do so in relation to any mandatory charges after having regard to any relevant considerations. The implementation of the BTOM is reliant on flexible application of risk, on-going financial viability of CAs and proportionate financial liability across stakeholder and operators. Changing the duty facilitates this desired flexibility;
- Article 81 of the Official Controls Regulation currently contains an exhaustive list of costs that CAs can use to determine mandatory fees and charges. This instrument will allow other costs of official controls to be considered, whilst maintaining the requirement to not charge more than is necessary to recover costs. This will allow CAs to recover costs for items that are not currently in scope of Article 81 and enables the application of risk factors set out in the BTOM;
- Article 82 of the Official Controls Regulation currently enables fees or charges for official controls to be calculated at a flat rate on the basis of overall costs of official controls borne by competent authorities or on the basis of the actual costs of each official control. This instrument will make it clear that a flat rate calculation can be a set of flat rates, making it explicit that the charge could be a single charge or collection of charges. Additionally, it allows calculations to be done by costs borne by competent authorities collectively (with agreement). This enables CAs to pool costs for the purpose of administering a consistent charging model, for example, a collection mechanism across Government-owned BCPs; and
- Article 84 of the Official Controls Regulation provides that it is for the operator responsible for a consignment or its representative to pay fees or charges under Article 79(1). This will be revoked and replaced to provide that it will be for the operator responsible for a consignment or its representative to pay any fees and charges for official controls and other activities in relation to the consignment, unless other provision is made.

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

Provisional Plant Health Framework

Animal Health and Welfare Framework

Summary of stakeholder engagement/consultation

The UK led a consultation on the Border Target Operating Model in 2023. This included engagement with interested stakeholders.

The UK Government have advised that there is no, or no significant, impact on private, voluntary or public sector is foreseen.

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

The Scottish Government fundamentally disagreed with the Retained EU Law (Revocation and Reform) Act 2023 due to its lack of respect for devolution and its focus on deregulation and divergence from the EU. Although this SI is made under powers in that Act, Scottish Ministers are proposing to give their consent to the devolved provisions within it. This is because the scheme for fees and charges for official controls and other activities on animals and goods is currently GB wide, and there is policy agreement that there should be the same controls and flexibility regarding fees and charges by competent authorities in all parts of Great Britain. The UK Government is not proposing to legislate in relation to Scotland without the Scottish Ministers consent, and adequate opportunity for scrutiny will be given to the Scottish Parliament.

Therefore, the Scottish Ministers consider that consenting to this SI is acceptable.

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

OFC/016 will be made using the affirmative procedure and is to be laid in draft on 26 February 2024 to come into force on 30 April 2024.

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

N/A

Information about any time dependency associated with the proposal

Not applicable

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.

SI NOTIFICATION: SUMMARY

Defra OFC/016 - The Official Controls (Fees and Charges) (Amendment) Regulations 2024 – “Defra – OFC/016”
Proposed laying date at Westminster 26 February 2024
Date by which Committee has been asked to respond 22 February 2024
Power(s) under which SI is to be made The SI is made in exercise of powers conferred by section 14(2) and (3) of the Retained EU Law (Revocation and Reform) Act 2023.
Categorisation under SI Protocol Type 1
Purpose The purpose of this instrument is to facilitate the implementation of the Border Target Operating Model (“BTOM”) ⁴ as published the UK Government in August 2023. They will enable fees and charges for official controls to reflect changes to the sanitary and phytosanitary (“SPS”) border official controls regime as set out in the BTOM.
Other information N/A
SG Policy contact: Ian Cox, Agriculture and Rural Economy Directorate, Animal Health and Welfare Division ian.cox@gov.scot

⁴ [The Border Target Operating Model: August 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/the-border-target-operating-model)