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02 September 2024

Dear Convener,

**EU EXIT LEGISLATION – PROTOCOL 2 WITH SCOTTISH PARLIAMENT
THE OFFICIAL CONTROLS (EXTENSION OF TRANSITIONAL PERIODS) AND PLANT
HEALTH (FREQUENCY OF CHECKS) (MISCELLANEOUS AMENDMENTS)
REGULATIONS 2024 – “DEFRA OFC/021/R”**

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 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/021/R is subject to negative procedure and on current Defra plans is to be laid in the UK Parliament on 7 October 2024.

To align with the changes being brought in through Defra OFC/021/R (namely the extension to easement dates for checks on certain medium fruit and vegetables from EU member states, Liechtenstein and Switzerland; and goods entering GB from these territories via West Coast Port), the plant health fees legislation in Great Britain is being updated to reflect that no fees should be charged during this period. For Scotland, the fees changes are being made through

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the Plant Health (Import Inspection Fees) (Scotland) (Amendment) (No.2) Regulations 2024 (“the Fees Regulations”) which will amend the principal Plant Health (Import Inspection Fees) (Scotland) Regulations 2014. The Fees Regulations (which are subject to affirmative procedure) will be laid in draft in the Scottish Parliament on 4 September 2024. The Fees Regulations, if approved, are to come into force on 30 October 2024 to coincide with the easement’s dates being extended via Defra OFC/021/R.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee, and I look forward to hearing from you by 4 October 2025.

Yours sincerely



JIM FAIRLIE

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SI NOTIFICATION: SUMMARY

Title: The Official Controls (Extension of Transitional Periods) and Plant Health (Frequency of Checks) (Miscellaneous Amendments) Regulations 2024 – “Defra OFC/021/R”
Proposed laying date at Westminster: 7 October 2024
Date by which Committee is to respond: By 4 October 2024 at the latest
Power(s) under which SI is to be made: This SI is subject to negative procedure and is made in exercise of powers in Article 144(6) of, and paragraphs 2 and 3(2) of Annex 6 to, Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 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”)
Categorisation under SI Protocol: Type 1
Purpose: Defra OFC/021/R makes amendments to Annex 6 of the Official Controls Regulation by extending: <ul style="list-style-type: none">• the period during which plants and plant products from the EU, Liechtenstein and Switzerland entering GB through a west coast port are not subject to import controls from 31 October 2024 to 1 July 2025.• the period during which certain medium risk fruit and vegetable products from the EU, Liechtenstein and Switzerland are not subject to certain import controls from 31 October 2024 until 1 July 2025. It also amends the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022 (S.I. 2022/739) so that these categories of goods (with the exception of certain goods from Liechtenstein) are not subject to the full application of the rules on risk-based checks under the 2022 Regulations and may be checked at a frequency rate determined administratively by the competent authority. The end date of the Transitional Staging Period, as prescribed in the Official Controls (Extension of Transitional Periods) Regulations 2021 is also amended from 31 January 2025 to 1 July 2025.
Other information The Scottish Statutory Instrument the Plant Health (Import Inspection Fees) (Scotland) Regulations 2014 will be amended to delay introduction of fees for import checks to mirror the changes in Defra OFC/21/R.
SG Policy contact: Plant Health: Yvonne Hay (Yvonne.Hay@gov.scot)

NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Official Controls (Extension of Transitional Periods) and Plant Health (Frequency of Checks) (Miscellaneous Amendments) Regulations 2024 – “Defra OFC/021/R”

Is the notification Type 1 or Type 2?

Type 1

A brief overview of the SI

Defra OFC/021/R will extend:

- a) The Transitional Staging Period for sanitary and phytosanitary controls on animal, animal products, plants and plant products entering Great Britain from the EU,
- b) The easement which disapplies import checks on goods originating in the EU, Liechtenstein and Switzerland entering GB via West Coast Ports until 1 July 2025, and
- c) The easement which disapplies checks on certain medium risk fruit and vegetables arriving from the EU, Liechtenstein and Switzerland until the 1 July 2025.

This SI is made in exercise of powers conferred by Article 144(6) of, and paragraphs 2 and 3(2) of Annex 6 to, Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 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”).

The SI is subject to negative procedure and is due to be laid on 7 October 2024. As far as the instrument extends to Scotland, it will make provision which relates to devolved matters.

This is an area where alignment with the EU has to be seen in the context of the UK’s operation of its system of border checks and controls post EU Exit, particularly in light of its international obligations. Since the UK’s withdrawal from the European Union, as a third country the UK is required to operate its own system of sanitary and phytosanitary checks on imported goods. This instrument makes changes within that framework and continues to maintain the high standards of sanitary and phytosanitary control currently in place.

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

Summary of the proposals:

The purpose of the instrument is to extend the Transitional Staging Period (TSP) and to continue with the EU medium risk fruit and vegetable and West Coast Ports easements.

Defra OFC/021/R does this by making amendments to:

- The Official Controls Regulation to extend the easement periods for import checks on certain categories of goods (now defined collectively as “excepted goods”).

For certain fruit and vegetables, the period of this easement is extended to 1 July 2025 and for goods entering Great Britain through a “relevant port” it is also being extended to 1 July 2025. The definition of “relevant port” is also amended to include Swansea Port.

- The Official Controls (Extension of Transitional Periods) Regulations 2021 (S.I. 2021/809) to extend the TSP by amending its end date to 1 July 2025 from 31 January 2025.
- The Official Controls (Plant Health) (Frequency of Checks) Regulations 2022 (S.I. 2022/739). The provision delays the application of the rules relating to frequency rates of physical and identity checks for certain plants, plant products and other objects originating in an EU Member State, Liechtenstein, or Switzerland: for certain medium risk fruit and vegetables, and for goods entering Great Britain through a relevant port, to the 1 July 2025. The definition of “relevant port” is also amended to include Swansea Port.

Background

Transitional Staging Period

The EU (Withdrawal) Act 2018 converted and preserved EU law at the end of the Implementation period into domestic law (retained EU law; now known as assimilated law). It also provided for amendments to be made to address deficiencies arising from EU exit. Those amendments included the introduction of the TSP which has been used to stagger the introduction of full import controls on EU imports into Great Britain, taking into account 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 Instruments. The most recent extension was implemented in Scotland by the Official Controls (Extension of Transitional Periods) (Amendment) Regulations 2024 and expires on 31 January 2025.

In August 2023 the GB governments agreed the Border Target Operating Model¹, a new approach to importing goods into Great Britain, to be progressively introduced from the end of January 2024. The TSP is in operation during this period of implementation and provides a basis on which import checks can be progressively introduced on EU goods. Specific easements under the TSP can be extended and modified.

Import checks of Fruit and Vegetable from the EU and checks from goods arriving at West Coast Ports.

The principal legislation governing the controls required on movement into Great Britain (GB) of plants and plant products is set out in assimilated law legislation, namely Regulation (EU) 2016/2031 (“the Plant Health Regulation”) for plant health and the Official Controls Regulation for animal, plant and public health (together “the EU Regulations”). The Official Controls (Plant Health) (Frequency of Checks) Regulations 2022 (S.I. 2022/739) (“the 2022 Regulations”) provide a methodology to determine the frequency of documentary, identity and physical checks (together known as import

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assets.publishing.service.gov.uk/media/64f6e2629ee0f2000db7be8e/Final_Border_Target_Operating_Model.pdf

checks) on certain goods imported from certain countries including EU member states, Liechtenstein and Switzerland.

The current position under the Plant Health (Fees) (England) and Official Controls (Frequency of Checks) (Amendment) Regulations (S.I 2024/557) which came into force on 30 April is that the introduction of import checks on fruit and vegetables from the EU (as listed in the table in Schedule 2A to the Plant Health (Amendment etc.) (EU Exit) Regulations 2020) will commence on 31 October 2024. Additionally, it was planned these import checks would commence for these goods being introduced from the EU arriving in the GB via 'relevant ports' on the West Coast.

It is now necessary for these planned checks to be delayed for goods from the EU, Liechtenstein and Switzerland and accordingly import checks on medium risk fruit and vegetables will be extended until 1 July 2025, along with import checks on goods entering GB via West Coast Ports.

Why the need for change?

Fruit and Vegetable delays

Traders who primarily import fruit and vegetables were already under significant pressure to be business-ready for the implementation of the second stage for the Border Target Operating Model, which came into effect on 30 April 2024. As such it was agreed to extend the easement on medium risk fruit and vegetable goods (continuing to treat these as low risk) from 31 October 2024 until 1 July 2025. This means that import checks on certain goods and associated fees will be delayed providing extra time for businesses to adjust. At the same time, it allows the technical working group under the UK Plant Health Services (UKPHS) (which consist of officials from Dera, Scottish and the Welsh Governments) who are responsible for conducting the reclassifying exercise the extra time needed to analyse the outcome and how best to treat these goods that appeases the trade, meets BTOM objectives without compromising biosecurity.

It is recognised extending the easement to 1 July 2025 further prolongs the risk to UK biosecurity. The UKPHS have assessed these risks and concluded that the current risk profile for this activity is unlikely to change during this extended period.

UKPHS will continue with its systematic, proactive screening of potential new and emerging biosecurity risks and be responsive to changes in risk levels via actions such as surveillance, enhanced inspection, regulation, import controls, research and awareness raising.

West Coast Ports delays

Welsh Ministers have publicly announced that BCPs will not be ready until at least Spring 2025. In addition, the TSP needs to be extended to allow for live animal checks moving to BCPs in Spring 2025. Therefore, to avoid disruption to import trade routes it is necessary to delay import checks on EU goods entering GB from any West Coast Ports to 1 July 2025. This provides confidence to the industry that these checks will only take place when all UK administrations have the adequate infrastructure in place (fully operational Border Control Posts).

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

Provisional Animal Health and Welfare Framework
Provisional Plant Health Framework

Other information:

The Scottish Statutory Instrument the Plant Health (Import Inspection Fees) (Scotland) Regulations 2014, which prescribes fees associated with import checks, will be updated to reflect these changes. This ensures that the delay in the implementation of import checks and the application of associated fees on medium risk fruit and vegetables imported from the European Union, Switzerland and Liechtenstein will not take place in Scotland until 1 July 2025, including goods arriving in Scotland from West Coast Ports. Similar but separate fees legislation is being introduced in England and Wales.

Summary of stakeholder engagement/consultation

There was a short, targeted stakeholder engagement conducted by Defra on behalf of all GB administrations on the proposed amendments to extending the TSP, as part of wider engagement on implementation of the Border Target Operating Model (BTOM), Fruit and Vegetables and West Coast Port easements. The engagement focused on stakeholders such as the UK Plant Health Advisory Forum, which includes the Fresh Produce Consortium, the Horticultural Trades Association, and other Scottish representatives. At the same time, the Scottish Government made Scottish importers who traded in regulated plant and plant products aware of the consultation and plans.

The consultation ran from 13 May 2024 to 3 June 2024. Defra confirmed one response was received; from the National Farmers' Union, which sought clarity on the definition of medium risk fruit and vegetables as they considered this to be insufficiently clearly set out in the engagement documents. Defra have provided further information to the NFU to provide clarity and this will also be provided in the publication of the consultation response which is expected in early September.

In addition, Defra, again on behalf of the Scottish and Welsh Government, ran a separate consultation regarding the extension of the TSP, which sought views amending the end date of the TSP from 31 January 2025 to 1 July 2025. This ran for one week, between 30 July and 6 August 2024. It was sent to the same stakeholders as above easements but was extended to other businesses who are involved with the import of live animals, animal products, such as the International Meat Trade Association and the British Horse Council. It was confirmed that six responses were received, all from stakeholder trade associations. Four were supportive of the proposed changes, noting that it was preferable to businesses for new controls to be introduced with adequate notice to allow business planning, whilst two of the responses sought additional information on the extension of TSP arrangements. No responses were received from Scottish businesses.

The intention is to publish the consultation responses on the UK Plant Health Portal early September 2024. This will include detail of the stakeholder feedback and the response.

In addition, there has also been informal engagement with the Horticultural Trades Association and the Fresh Produce Consortium. who welcomed the further extensions as it provided more time for GB and EU businesses to get ready for the necessary checks.

SPS matters are devolved, and Scottish Government officials have engaged with counterparts in Defra in the development of the proposals.

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

This SI takes account of devolved competence. Scottish Ministers are of the opinion it would be appropriate to introduce these provisions 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 Borders Targeting Operating Model to ensure there remains a coherent, effective and efficient system of controls in place without compromising biosecurity and minimising disruption to trade.

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

On current timelines Defra anticipate laying this instrument on 7 October 2024.

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.