

Rural Affairs, Islands and Natural Environment Committee

7th Meeting, 2021 (Session 6), Wednesday 6 October 2021

Subordinate legislation

Introduction

1. This paper supports the Committee's consideration of SSI 2021/297: [The Official Controls \(Transitional Staging Period\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2021/](#)
2. The Committee is invited to consider the statutory instrument and—
 - agree whether it is content that the parliamentary procedure attached to the instrument by the Scottish Government is appropriate; and
 - consider the instrument in the usual way.

Purpose of the Regulations

3. These Regulations make a number of amendments to existing Regulations. The policy note is attached at **Annexe A**. The instrument—
 - Amends the Official Controls (Extension of Transitional Periods) Regulations 2021 to provide that the transitional staging period will not end on earlier dates in respect of documentary checks for products of animal origin, germinal products, animal by-products and derived products, and that for those products the transitional staging period, including in respect of checks, now ends on 28 February 2022; and
 - Amends the Trade in Animals and Related Products (Scotland) Regulations 2012 to provide that during the transitional staging period official controls need not take place at 'the place of destination' indicated in the relevant accompanying importation documentation, and that notification of importation through the appropriate computerised information system be given to the authority responsible for performing official controls at the place where official controls are to be carried out.
4. The SSI was laid on 2 September 2021 and the lead committee must report by 27 October 2021.
5. The Scottish Government has given the SSI the 'low' categorisation on the basis the amendments are solely to make relatively minor amendments to the transitional arrangements in place.
6. The DPLRC agreed on [21 September 2021](#) that the instrument should be considered under the negative procedure and with the 'low' categorisation designated by the Scottish Government.

Background to considering SSIs laid under the European Union (Withdrawal) Act 2018

7. In anticipation of the UK leaving the EU, changes were required to devolved legislation by way of statutory instruments. Under the European Union (Withdrawal) Act 2018, and where the Scottish Government considered a UK-wide approach to the legislative changes would be appropriate, these have been made by UK statutory instruments (SIs) laid by the UK Government with Scottish Ministers' consent. The Scottish Parliament considered these legislative changes – notified to them by the Scottish Government – in advance of the Scottish Government giving consent.
8. Other legislative changes have been made through Scottish statutory instruments (SSIs). SSIs related to EU exit have been considered in the same way that 'domestic' SSIs are considered except that the lead committee has the opportunity, in advance of its policy consideration, to recommend to the Scottish Government that the parliamentary procedure allocated to the instrument should be changed. This process is known as the sift.
9. A [protocol](#) has been agreed between the Scottish Government and Scottish Parliament on the process for considering SSIs laid under the 2018 Act. The protocol sets out further information about the sifting process.
10. The protocol also sets out an approach which categorises SSIs – high, medium or low – to assist committees' prioritisation in terms of scrutiny and gives the Delegated Powers and Law Reform Committee (DPLRC) a role in highlighting to a lead committee those SSIs where it disagrees with the Scottish Government about the categorisation.

Consideration of the parliamentary procedure – the sift

11. Scottish Ministers have discretion about whether instruments made under Schedule 2 of the 2018 Act should be subject to the affirmative or negative procedure, unless the instrument makes provision falling within one of the categories which requires the mandatory affirmative procedure to be used.
12. As set out above, the lead committee has the opportunity, in advance of its consideration, to recommend to the Scottish Government that the parliamentary procedure allocated to the instrument should be changed. Thus, the lead committee can recommend that an instrument laid under the negative procedure should be revoked and laid as an affirmative instrument and vice versa. The protocol states this “enables committees to recommend a change where they consider that the matter is of such significance that it requires active Parliamentary approval (or conversely is not so significant that it requires Parliamentary time to be allocated to its approval)”.
13. The DPLRC will also consider the parliamentary procedure allocated to the instrument and make a recommendation to the lead committee where it agrees the procedure should be changed.

14. Paper 3 provides further information to inform the Committee's consideration of the sift.

No recommendation to change the parliamentary procedure

15. Where a lead committee agrees with the parliamentary procedure, the instrument is thereafter considered and disposed of in the same way as a 'domestic' SSI.

Recommendation to change the parliamentary procedure

16. Where a lead committee recommends the parliamentary procedure should be changed, it must report to the Parliament. The Scottish Government is expected to meet that recommendation as soon as possible.

17. A change of procedure does not, however, affect the timetable for Parliamentary consideration and the SSI should be considered under the procedure recommended by the lead committee.

Consideration of the SSI

18. As set out above, the process for the policy consideration of an SSI related to EU exit following the sift is the same as for a 'domestic' SSI. The Scottish Government has decided the negative parliamentary procedure is appropriate for this SSI.

19. The negative parliamentary procedure is set out in Chapter 10 of the Parliament's [Standing Orders](#). Instruments subject to the negative procedure come into force on a specified date and remain in force unless it is annulled by the Parliament; for this reason, negative instruments can be described as instruments subject to annulment. Thus, the Parliament does not need to agree to the instrument in order for it to come into force.

20. The Parliament may, however, and on the recommendation of the lead committee, recommend the instrument be annulled within 40 days of the instrument being laid. Any MSP may by motion propose to the lead committee that the committee recommends "that nothing further is to be done under the instrument". Any motion for annulment would be debated by the lead committee and a report made to Parliament.

For decision

21. The Committee is invited to:

- **Agree whether it is content the parliamentary procedure given to the instrument by the Scottish Government is appropriate (agenda item 2).**
- **Note the instrument or consider if it has anything to report to the Parliament in relation to either of them (agenda item 3).**

Rural Affairs, Islands and Natural Environment Committee Clerks

September 2021

ADD POLICY NOTE PDF

POLICY NOTE
THE OFFICIAL CONTROLS (TRANSITIONAL STAGING PERIOD)
(MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2021
SSI 2021/297

The above instrument is made in exercise of the powers conferred by Article 144(6) of, and paragraph 2 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, paragraphs 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018 and of all other powers enabling them to do so.

The instrument is subject to negative procedure.

Purpose of the instrument

These Regulations amend the Official Controls (Extension of Transitional Periods) Regulations 2021 (S.I. 2021/809) to remove provisions appointing the end date for “the transitional staging period” (defined in Annex 6 to Regulation (EU) 2017/625 (EUR 2017/625)) for certain checks on products of animal origin and certain types of animal byproduct.

These regulations also remove the requirement that official controls be carried out at the place of destination and can now be carried out at any appropriate place, by the competent authority for that place, as provided for in Annex 6 of EU 2017/625.

Policy Objectives

The Official Controls (Extension of Transitional Periods) Regulations 2021 (the 2021 Regulations) amended transitional periods relating to official controls requirements for certain types of animals and goods being imported into Great Britain. For certain checks on certain types of product, the extension of the transitional staging period was to earlier dates: 30 September 2021 and 31 December 2021.

This instrument firstly amends the 2021 Regulations to provide that the transitional staging period will not end on earlier dates in respect of checks for products of animal origin, germinal products, animal by-products and derived products, and that for those products the transitional staging period, including in respect of checks, now ends on **28 February 2022**.

The amendments will allow checks to be carried out on animals and related products during the remainder of the transitional staging period at the appropriate frequency rate provided for in Annex 6 to Regulation (EU) 2017/625.

Secondly, the Trade in Animals and Related Products (Scotland) Regulations 2012¹ are amended to provide that during the transitional staging period official controls need not take place at ‘the place of destination’ indicated in the relevant accompanying importation documentation, and that notification of importation through the appropriate computerised

¹ S.S.I 2012/177

information system be given to the authority responsible for performing official controls at the place where official controls are to be carried out.

Explanation of the law being amended by the regulations

Regulation 2 of the Official Controls (Extension of Transitional Periods) Regulations 2021 appoints the end date for the transitional staging period provided for by Annex 6 to Regulation (EU) 2017/625 for certain animals and goods which originate from certain third countries.

Schedule 5 of the Trade in Animals and Related Products (Scotland) Regulations 2012 makes provision regarding the importation of animals and related products during the transitional staging period.

Reasons for and effect of the proposed change or changes on retained EU law Schedule 5 of the 2012 Regulations was made in exercise of powers conferred by the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the European Union, and is amended by regulation 3 of these Regulations. Schedule 5 made provision regarding the importation of animals and related products during the transitional staging period, some of which are no longer appropriate and insufficiently flexible as transitional arrangements given the extension of the transitional staging period Regulation 3 thus amends paragraphs 4(6)(a) and 5(5) of schedule 5 of the Trade in Animals and Related Products (Scotland) Regulations 2012 to provide that during the transitional staging period official controls need not take place at the place of destination indicated in the relevant accompanying importation documentation, and that notification of importation through the appropriate computerised information system be given to the authority responsible for performing official controls at the place where official controls are to be carried out. The amendments will allow checks to be carried out on animals and related products during the transitional staging period at any appropriate place provided for in Annex 6 to Regulation (EU) 2017/625.

Statements required by European Union (Withdrawal) Act 2018

The Regulations are made in exercise of powers conferred by Article 144(6) of, and paragraph 2 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. In relation to regulation 3 of the Regulations, they are also made in exercise of the powers in paragraphs 1(1) and (3) of Part 1 of schedule 2 of, and paragraph 21(b) of schedule 7 of, the European Union (Withdrawal) Act 2018. The statements below relate to regulation 3 in so far as it is made under the European Union (Withdrawal) Act 2018.

Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate

The Cabinet Secretary for Rural Affairs and Islands has made the following statement “In my view the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2021 do no more than is appropriate. This is the case because the Regulations make only minor necessary amendments to ensure appropriate arrangements can be put in place for sanitary checks on animals and related products during the remainder of

the transitional staging period

Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action

The Cabinet Secretary for Rural Affairs and Islands has made the following statement “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. These are necessary to facilitate trade, protect food supply and ensure effective disease prevention, eradication and control as well as for the continued protection of public health.

Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation

The Cabinet Secretary for Rural Affairs and Islands has made the following statement “In my view the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2021 do 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.”

Statement that Scottish Ministers have, in preparing the regulations, 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

The Cabinet Secretary for Rural Affairs and Islands has made the following statement “In my view the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2021 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.”

Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament Statement that Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare

The Cabinet Secretary for Rural Affairs and Islands made the following statement “In my view the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2021 have had due regard to the guiding principles on the environment and animal welfare as derived from the equivalent principles provided for in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union.”

Statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)

The Cabinet Secretary for Rural Affairs and Islands has made the following statement, “In my view the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2021 do not alter current policy on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)”.

An indication of how the regulations should be categorised in relation to the significance of the change proposed

Low - the amendments are solely to make relatively minor amendments to the transitional staging period.

Statement setting out the Scottish Ministers' reasons for their choice of procedure

The instrument is subject to negative procedure.

Consultation

In accordance with Article 144(7) of Regulation (EU) 2017/625, before making these Regulations, relevant interests likely to be substantially affected by the regulations and such other bodies or persons as Ministers have considered appropriate have been consulted.

Impact Assessments

Full impact assessments have not been prepared for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. There is expected to be no impact on business, charities or voluntary bodies.

Financial Effects

The Cabinet Secretary for Rural Affairs and Islands confirms that no BRIA is necessary, as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Agriculture and Rural Economy Directorate
August 2021