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Copied to UKSIs@parliament.scot and
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10 April 2024

Dear Finlay,

**THE OFFICIAL CONTROLS (EXTENSION OF TRANSITIONAL PERIODS)
(AMENDMENT) REGULATIONS 2024 – DEFRA PH/055
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 SIs and they are 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.

It is regrettable that on this occasion the Scottish Government has not been able to comply with the agreed Protocol timescales. The UK Government has only recently shared a draft of this instrument and I am on record at expressing frustration with the handling of the UK Government's plans on legislation in this area. Whilst regrettable, I do believe the instrument is nonetheless necessary. It remains crucial to ensure that the ability to implement import controls flexibly is retained. If this SI does not come into force by 28 April 2024, there is a significant risk of disruption at Border Control Posts as the infrastructure (especially at points

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of entry on the west coast of GB) is not yet in place to conduct required checks on all EU goods, meaning that the delivery of the wider BTOM would be put at risk.

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

Given the extremely tight and regrettable timing as I have mentioned, I look forward to hearing from you by **Thursday 18 April 2024**.

Yours sincerely,



MAIRI GOUGEON

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NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Official Controls (Extension of Transitional Periods) (Amendment) Regulations 2024 - Defra PH/055

Is it Type 1 or Type 2 notification

Type 1

A brief overview of the SI

The Official Controls (Extension of Transitional Periods) (Amendment) Regulations 2024 (PH/055) 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) 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;
- (b) 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 31 January 2025. 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 22 April 2024 and to come into force on 28 April 2024.

PH/055 makes the following provisions which will extend to Scotland:

- It extends the Transitional Staging Period end date from 29 April 2024 to 31 January 2025.

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; 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 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 Instruments. The most recent extension was implemented in Scotland by the Official Controls (Extension of Transitional Periods) (Miscellaneous Amendments) Regulations 2024 and expires on 29 April 2024.

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 29 April 2024 to 31 January 2025.

Consultation

In accordance with Article 144(7) of Regulation (EU) 2017/625, Defra carried out a shorted targeted stakeholder engagement, on behalf of all GB administrations, with the Food Standards Agency and industry stakeholders on the proposed amendment to extending the TSP as part of wider engagement on implementation of the Border Target Operating Model (BTOM) from 30 April. A total of 8 responses were received, with 5 providing feedback.

Several stakeholders questioned the interaction between extension of the TSP and the import controls being introduced on 30 April 2024. Extending the TSP from 29 April to 31 January 2025 is necessary to bring in the second phase of BTOM controls on 30 April 2024 for EU goods ahead of further legislative changes later in the year; and continue the different arrangements for non-qualifying Northern Ireland goods entering Great Britain from Ireland. The implementation of these new controls are to be legislated for separately.

Other information

This SI does not transfer any legislative functions.

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.

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

PH/055 will be made using the negative procedure and it is intended to be made on 22 April 2024 to come into force on 28 April 2024.

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

The UK Government's original intention was to lay an SI in early April but this has been regrettably delayed due to complexities associated with the SI together with late changes required to the instrument bringing forward the next phase of the published Border Target Operating Model from 30 April 2024. It has become necessary to make an instrument which continues the extension of the Transitional Staging Period while these are resolved. Whilst the Scottish Parliament is unfortunately not being afforded 28 days to scrutinise the instrument it should also be highlighted that with the instrument scheduled to be laid in the UK Parliament on 22 April 2024, and coming into force on 28 April 2024, the 21 day rule at Westminster will be similarly breached.

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.

SI NOTIFICATION: SUMMARY

Title:

The Official Controls (Extension of Transitional Periods) (Amendment) Regulations 2024 – “Defra PH/055”

Proposed laying date at Westminster:

22 April 2024

Date by which Committee is to respond:

By 18 April 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 conferred by Article 144(6) of, and paragraph 2 of Annex 6 to, of 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”).

Categorisation under SI Protocol:

Type 1

Purpose:

Defra PH/055 is continuing the application of Annex 6 of the Official Controls Regulation by extending the transitional staging period.

Other information

The Official Controls (Extension of Transitional Periods) Regulations 2021 (S.I. 2021/809) are amended so that the end date of the transitional staging period is changed from 29 April 2024 to 31 January 2025.

SG Policy contact:

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