

Rural Affairs, Islands and Natural Environment Committee

10th Meeting, 2021 (Session 6), Wednesday 10 November 2021

Subordinate legislation

Introduction

1. This paper supports the Committee's consideration of the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No. 2) Regulations 2021 (SSI 2021/342)¹. This instrument is made using the powers under the European Union (Withdrawal) Act 2018.
2. Consideration of instruments laid under the 2018 Act, is split in to two parts—
 - First, the Committee must agree whether it is content the parliamentary procedure attached to the instrument by the Scottish Government is appropriate (**agenda item 2**). For this instrument, the negative procedure has been applied;
 - Second, if the Committee agrees with the parliamentary procedure, it then considers the policy of the instrument in the usual way (**agenda item 3**).

Agenda item 2 – Consideration of the parliamentary procedure (the sift)

3. 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.
4. 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 enables committees to consider the procedure applied and recommend a change where they consider 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).
5. The lead committee has the opportunity, in advance of its consideration of the instrument, 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

¹ At the time of publication, the Instrument was not available on Legislation.gov.uk. Members may request hard copies from the clerks.

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)".

6. The Delegated Powers and Law Reform Committee (DPLRC) will consider the parliamentary procedure allocated to the instrument and make a recommendation to the lead committee where it agrees the procedure should be changed.
7. 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. 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. 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.
8. 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.
9. The Scottish Government has given the SSI a 'low' categorisation on the basis the amendments are solely to make relatively minor amendments to the transitional arrangements in place.
10. The DPLRC agreed on [26 October 2021](#) that the instrument should be considered under the negative procedure and with the 'low' categorisation designated by the Scottish Government.
11. **The Committee is invited to agree whether the negative procedure given to the instrument by the Scottish Government is appropriate (agenda item 2).**

Agenda item 3 – Consideration of the subordinate legislation

Policy objectives

12. The SSI was laid on 28 September 2021 and the lead committee must consider it by 15 November 2021.
13. These Regulations make a number of amendments to existing Regulations. The policy note is attached at **Annexe A**. The instrument does two things, it—
 - changes the date from which the requirement for prior notification of products of animal origin applies, from 1 October 2021 to 1 January 2022; and
 - changes the date for which accompanying health certificates for products of animal origin and animal by-products are required from 1 October 2021 to 1 January 2022.

14. The Scottish Government wrote to the Presiding Officer when the instrument was laid as it breached the 28-day rule (an instrument must be laid at least 28 days before the instrument comes into force). The Scottish Government stated it breached the rule as a result of the UK Government making changes at short notice to the Border Operation Model timelines. This change impacted the commencement date of the prior notification and health certification requirements above. The letter is attached in **Annexe B**.

15. Consideration by the Delegated Powers and Law Reform Committee

16. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [26 October 2021](#) and drew it to the attention of the Parliament under reporting ground (j) as it has been laid less than 28 days before coming into force.

17. The Committee was satisfied with the reasons given for the breach of the 28 day rule.

18. Parliamentary procedure – negative instrument

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. 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.

21. The Committee is invited to note the instrument or to consider if it wishes to raise any issues in relation to the instrument (agenda item 3).

**Rural Affairs, Islands and Natural Environment Committee
November 202**

Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No. 2) Regulations 2021 (SSI 2021/342) – policy note

POLICY NOTE

THE OFFICIAL CONTROLS (TRANSITIONAL STAGING PERIOD) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) (NO. 2) REGULATIONS 2021

SSI 2021/342

The above instrument is made in exercise of the powers conferred by 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

The Regulations amend Annex 6 of Regulation (EU) 2017/625 (EUR 2017/625) and Schedule 5 of the Trade in Animals and Related Products (Scotland) Regulations 2012, to change the date from which the requirement for prior notification of products of animal origin applies, from 1 October 2021 to 1 January 2022. They also amend the Trade in Animals and Related Products (Scotland) Regulations 2012 to change the date for which accompanying health certificates for products of animal origin and animal by-products are required from 1 October 2021 to 1 January 2022.

- **Policy Objectives**

The changes made by this instrument relate to controls on imports to Scotland of products of animal origin, and animal by-products, which are part of the set of commodities known collectively as sanitary and phyto-sanitary (“SPS”) goods.

Operability legislation made in late 2020 under the European Union (Withdrawal) Act 2018 (“the EU Withdrawal Act”) set out a ‘transitional staging period’, to allow controls on EU SPS imports to be introduced over several months. This staging was intended to help trade sectors and related controls infrastructure to be ready for the additional volume of biosecurity checks which are a consequence of the decision to leave the European Union.

The second phase of the Border Operating Model (BOM) was due to commence 1 October 2021 seeing the introduction of Pre-notification requirements for Products of Animal Origin (POAO). Export Health Certificate requirements for POAO and animal by-products (ABP) were also due to come into force on the same date.

On 14 September 2021, the UK Government announced its decision to revise the current timetable for the introduction of all remaining checks. The UK Government is bringing

forward legislation to remove the requirement for the prior notification of POAO, and health certificate requirements for POAO and ABPs imported into England .

Without this instrument, from 1 October 2021 prior notification and health certificate requirements would continue to apply in Scotland but not in other parts of Great Britain, with businesses importing animal products into Scotland obliged to comply with the SPS control requirements for pre-notification and health certificates, as currently set out in legislation.

This may result in disruption to trade, whilst having little benefit to biosecurity as imports would be arriving in other parts of GB without prior notification or health certificate requirements.

- **Explanation of the law being amended by the regulations**

This instrument changes the following legislation:

- Annex 6 to Regulation (EU) 2017/625 which makes provision for the transitional staging period in relation to territories subject to special transitional import arrangements; and
- 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**

Following the decision of the UK Government, the currently applicable dates for the introduction of prior notification requirements for POAO and health certificates for POAO and ABPs are no longer considered appropriate transitional provision. The changes will amend that aspect of the transitional arrangements made in Regulation (EU) 2017/625 and the Trade in Animals and Related Products (Scotland) Regulations 2012

Statements required by European Union (Withdrawal) Act 2018

The Regulations are made in exercise of powers conferred paragraphs 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of 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) (No. 2) Regulations 2021 do no more than is appropriate. This is the case because the Regulations make only minor necessary amendments to 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 and prevent disruption of trade into Scotland and protect food supply.

- **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) (No. 2) 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) (No. 2) 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) (No. 2) 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) (No. 2) 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**

Negative procedure is considered appropriate as these Regulations make amendments to transitional arrangements. These Regulations not include provisions which fall within paragraph 1(2) of schedule 7 of the European Union (Withdrawal) Act 2018.

- **Consultation**

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 September 2021

Letter from the Scottish Government to the Presiding Officer, 28 September 2021

THE OFFICIAL CONTROLS (TRANSITIONAL STAGING PERIOD) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) (NO. 2) REGULATIONS 2021

The Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No. 2) Regulations 2021 (the Regulations) were made by the Scottish Ministers under by paragraphs 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018 and laid before the Scottish Parliament today, **Tuesday 28 September 2021**, with a coming into force date of 1 October 2021.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 sets out that a negative SSI must be laid before the Scottish Parliament at least 28 days before the instrument comes into force. On this occasion, it has not been possible to comply with this requirement. In accordance with the requirements of section 31(3) of that Act, this letter explains why this requirement has been breached.

This instrument is being brought forward following an announcement made on 14 September 2021 by the UK Government² to yet further changes being made to the Border Operating Model (BOM). The second phase of the BOM had been due to commence across Great Britain on 1 October 2021 seeing the introduction of pre-notification requirements for products of animal origin. Export Health Certificate requirements for products of animal origin and animal by products were also due to apply from the same date. However, with less than 3 weeks to go to the implementation deadline the UK Government unilaterally made further changes to the BOM timelines, with no collaboration or discussion with the Devolved Administrations. These changes included that the prior notification and health certification requirements due to commence on 1 October will not proceed. The Scottish Government remains concerned at the UK Government's unilateral decision to alter and delay further importing stages of the BOM, and the Cabinet Secretary for Rural Affairs and Islands wrote to Lord Frost on this basis on 15 September³ highlighting concern at the lack of consultation with the devolved nations, and that Scottish Ministers had no involvement in something that has a material impact on Scotland and its food and drink industry

In order to prevent disruption to imports into Scotland, it has been necessary to bring forward this instrument to provide that prior notification and health certificate requirements do not apply to the import of animal products into Scotland from 1 October 2021 also Given the late announcement by the UK Government, it has not been possible for the Scottish Government to comply with the 28 day rule.

The Scottish Government fully acknowledge the difficulties that breaching the 28-day rule poses in terms of Parliamentary scrutiny, and regret that on this occasion it has not been possible to comply with this requirement.

² [Written statements - Written questions, answers and statements - UK Parliament](#)

³ [Letter to Lord Frost from Mairi Gougeon MSP: 15 September 2021 - gov.scot \(www.gov.scot\)](#)