

# Rural Affairs, Islands and Natural Environment Committee

**14<sup>th</sup> Meeting, 2022 (Session 6),  
Wednesday, 4 May**

## Subordinate legislation

### Introduction

1. This paper supports the Committee's consideration of the [Official Controls \(Transitional Staging Period\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2022](#) (SSI 2022/90).
2. This instrument has been made using powers under the European Union (Withdrawal) Act (EUWA) 2018. The process for consideration of instruments laid under the EUWA is set out in a [protocol](#) agreed by the Scottish Parliament and Scottish Government. The parliamentary process for an instrument made under the EUWA is slightly different to that for other instruments; further information is provided in Annexe A.
3. Consideration for EUWA SSIs is split into two parts—
  - First, the Committee must agree whether it is content that the parliamentary procedure designated to the instrument by the Scottish Government is appropriate (**agenda item 3**).
  - Second, if the Committee agrees with the parliamentary procedure, it considers the policy of the instrument in the usual way (**agenda item 4**).

### Agenda item 3: Consideration of parliamentary procedure

4. The Scottish Government has designated the negative procedure for this SSI.
5. The instrument was considered by the Delegated Powers and Law Reform Committee (DPLRC) on [19 April 2022](#). In [correspondence](#) with the Scottish Government, the DPLRC asked for an explanation for its choice of the negative procedure. The Scottish Government said the negative procedure was considered appropriate due to the limited impact of the amendments made by the instrument which will apply for a limited time.

6. The DPLRC was content that the appropriate scrutiny procedure and categorisation have been applied to the instrument.
7. **The Committee is invited to agree whether the negative procedure given to the instrument by the Scottish Government is appropriate.**

## Agenda item 4: Policy consideration

8. The instrument was laid on 17 March 2022 and the lead committee must conclude consideration by 9 May 2022. The SSI comes into force on 12 May 2022.
9. Members will be aware the EUWA converted and preserved EU law at the end of the transition period into domestic law (retained EU law). It also provided for amendments to be made to address deficiencies arising from EU exit. Those amendments included the introduction of a 'transitional staging period' for goods entering GB from the EU and certain other countries.
10. The policy note accompanying the SSI states that UK and Scottish statutory instruments made and brought into force in late 2020 gave effect to the UK Government's decision to introduce checks on EU sanitary and phytosanitary (SPS) imports in phases during this transitional staging period. These included amendments to regulations governing official controls, trade in animals and related products and plant health which provided for phased requirements for pre-notification, health and phytosanitary certification and documentary checks on imports of EU and EEA products of animal origin (POAO), animal by-products (ABP), plants, plant products and other objects. The dates for the end of the transitional staging period, and the phased introduction of requirements within it, have since been amended by a range of instruments.
11. The purpose of this instrument is to exempt, for the period of the transitional staging period, relevant goods considered low risk and consisting of products of animal origin and certain animal by-products produced in Northern Ireland or the Republic of Ireland and moved or imported into Great Britain from the Republic of Ireland from the pre-notification requirements which came into force from 1 January 2022. The policy note which accompanies the SSI is provided in Annexe B.
12. The same exemption was made for England and Wales by the UK Official Controls (Extension of Transitional Periods) (Amendment) (No.2) Regulations 2021. This SI was due to include provisions relating to devolved competence – and had been notified to the Scottish Parliament on [6 December 2021](#) – but the Scottish Government withdrew its consent after additional provisions were added at the last minute. The Cabinet Secretary wrote to the Committee on [15 December 2021](#) and explained that “since the terms of the original notification were submitted, the UK Government has subsequently decided - without any engagement with Scottish Ministers whatsoever – to make a number of significant changes to border policy due to come into force from the 1 January 2022”. Some provisions were made by the Scottish Government via an SSI – the

Animal Products (Transitional Import Conditions) (Miscellaneous Amendment) (Scotland) Regulations 2021 (SSI 2021/432) – instead.

13. In a subsequent letter on 21 March 2022, the Cabinet Secretary provided further information. She said that, “as this [the exemption] was announced by the UK Government very shortly before the UK SI was due to be laid and in the absence of established direct trade routes from the Republic of Ireland to Scotland, the Scottish Government chose to take time to consider the policy proposed by those changes prior to introducing legislation”. She went on to confirm that this SSI had been laid to replicate these provisions for Scotland.
14. According to the policy note, there are at present no established direct trade routes from the Republic of Ireland to Scotland. The policy note goes on to state, however, that the Scottish Ministers consider it is important to have the same import controls in place as the rest of GB, in particular, to avoid any possible barriers to the movement of Northern Ireland goods or that importers are required to follow different processes in Scotland than the rest of GB.
15. Members will recall the Committee considered the [Official Controls \(Transitional Staging Period\) \(Miscellaneous Amendments\) \(Scotland\) \(No. 3\) Regulations 2021](#) (SSI 2021/493) at its meeting on 26 January 2022. The instrument replaced the previous dates for the end of the transitional staging period with a single date – 30 June 2022. The Committee wrote to the Cabinet Secretary for Rural Affairs and Islands on [3 February 2022](#) asking for further information about the planned end of the transitional staging period on 30 June 2022. In her response of [21 March 2022](#), the Cabinet Secretary stated “further legislation is planned this year to set out specific requirements applying from 1 July 2022 and we will be setting this out in due course”.

## DPLRC consideration

16. The DPLRC highlighted a discrepancy between Regulations 2 and 3 in the instrument. Regulation 2, which inserts sub-paragraph (3B) into schedule 5 of the Trade in Animals and Related Products (Scotland) Regulations 2012, provides that “goods are taken to be produced in Northern Ireland if they are processed there”, whereas the equivalent provision made by Regulation 3 (and by the related UK SI referred to in the Policy Note) states that “goods are taken to be produced in Northern Ireland or the Republic of Ireland if they are processed there”. The DPLRC asked whether the absence of reference to the Republic of Ireland in sub-paragraph (3B) was intentional.
17. In its response, the Scottish Government confirmed this is a drafting error and the words “or the Republic of Ireland” should be included in Regulation 3. The Scottish Government stated it would correct this error via a future SSI.
18. The DPLRC considered this instrument at its meeting on 19 April 2022. The Committee was content with the commitment to correct this drafting error via a future SSI and was content with the instrument otherwise.

19. The Environment and Trade in Animals and Related Products (EU Exit) (Scotland) (Miscellaneous Amendment) Regulations 2022 (SSI 2022/138) was laid on 22 April. In addition to correcting this drafting error, the SSI makes provision for water environment, flood risk management, noise pollution control, air quality and has been referred to the NZET Committee. The DPLRC has not yet considered SSI 2022/138.

## **Parliamentary procedure – negative instruments**

20. 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.

21. 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**

22. **The Committee is invited to write to the Scottish Government to ask—**

- **Why the Scottish Government considers it necessary to introduce this exemption which, unless the transitional staging period is extended for a fourth time, would only be in place for approximately six weeks between 12 May and 30 June 2022; and**
- **for an update regarding the transitional staging period beyond 30 June 2022.**

23. **The Committee is invited to consider if it wishes to raise any other issues in relation to the instrument.**

**Rural Affairs, Islands and Natural Environment Committee  
May 2022**

## Scottish statutory instruments made under the EUWA

Scottish Ministers have discretion about whether instruments made under Schedule 2 of the EUWA 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.

A [protocol](#) has been agreed between the Scottish Government and Scottish Parliament on the process for considering SSIs laid under the EUWA. 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).

The lead committee has the opportunity, therefore, 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 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)”.

The 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.

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.

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 DPLRC a role in highlighting to a lead committee those SSIs where it disagrees with the Scottish Government about the categorisation.

## POLICY NOTE

### THE OFFICIAL CONTROLS (TRANSITIONAL STAGING PERIOD) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2022

#### SSI 2022/90

The above instrument is made by the Scottish Ministers in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018<sup>1</sup> and of all other powers enabling them to do so.

The instrument is subject to negative procedure.

#### **Purpose of the instrument**

To temporarily exempt goods which are produced in Northern Ireland or the Republic of Ireland and moved or imported into Great Britain from the Republic of Ireland from pre- notification requirements which came into force from 1 January 2022.

#### **Policy Objectives**

The EU (Withdrawal) Act 2018 (EUWA) converted and preserved EU law at the end of the Transition Period into domestic law (retained EU law). It also provided for amendments to be made to address deficiencies arising from EU exit.

Those amendments included the introduction of a ‘transitional staging period’ for goods entering Great Britain from the EU and certain other countries.

Statutory instruments and Scottish statutory instruments made and brought into force in late 2020 gave effect to the UK Government’s decision to introduce checks on EU SPS imports in phases during this transitional staging period. These included amendments to regulations governing Official Controls, Trade in Animals and Related Products and Plant Health which provided for phased requirements for pre-notification, health and phytosanitary certification and documentary checks on imports of EU and EEA products of animal origin (“POAO”), animal by-products (“ABP”), plants, plant products and other objects. The dates for the end of the transitional staging period and the phased introduction of requirements within it have been amended previously by the Trade and Official Controls (Transitional Arrangements for Prior Notifications) (Amendment) Regulations 2021<sup>2</sup>, the Official Controls (Extension of Transitional Periods) Regulations 2021<sup>3</sup>, the Animal Health, Plant Health, Seeds and Seed Potatoes (Miscellaneous Amendments) Regulations 2021<sup>4</sup>, the Official Controls (Transitional Staging Period) (Miscellaneous

---

<sup>1</sup> 2018 c. 16; paragraph 21 of schedule 7 was amended by paragraph 53 of schedule 5 of the European Union (Withdrawal Agreement) Act 2020 (c. 1).

<sup>2</sup> S.I. 2021/429

<sup>3</sup> S.I. 2021/809

<sup>4</sup> S.I. 2021/1229

Amendments) (Scotland) Regulations 2021<sup>5</sup>, the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No. 2) Regulations 2021<sup>6</sup>, the Animal Products (Transitional Import Conditions) (Miscellaneous Amendment) (Scotland) Regulations 2021<sup>7</sup> and the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No. 3) Regulations 2021<sup>8</sup> (“the December 2021 SSI”).

In December 2021 the UK Government laid an SI, the Official Controls (Extension of Transitional Periods) (England and Wales) (Amendment) (No. 2) Regulations 2021 (“the December 2021 UK SI”)<sup>9</sup>. The December 2021 UK SI made similar provision for England and Wales to that made by the December 2021 SSI for Scotland. In particular both the December 2021 UK SI and the December 2021 SSI changed the end date of the transitional staging period to 30 June 2022.

Under the transitional staging period arrangements lower risk SPS products moving from the EU to GB which, under the transitional staging period arrangements, were not subject to pre-notification requirements prior to 1 January 2022 are subject to pre-notification from that date. But in the December 2021 UK SI and the December 2021 SSI provision was also made for a temporary exemption to apply during the transitional staging period to ensure that goods which form part of passengers’ personal luggage and intended for personal consumption or use, and small consignments of goods sent to natural persons and not intended to be placed on the market were not subject to the pre-notification requirements which apply from 1 January 2022.

In addition, in the December 2021 UK SI only, provision was made for a temporary exemption to apply during the transitional staging period so that the lower risk SPS goods in question produced in Northern Ireland or the Republic of Ireland and moved or imported into Great Britain from the Republic of Ireland were also not subject to the pre-notification requirements which came into force from 1st January 2022. This was intended to maintain the treatment of SPS goods arriving in GB from the Republic of Ireland per the arrangements in place before that date, to avoid any disruption while discussions around the operation of the Northern Ireland Protocol were ongoing.

This instrument mirrors for Scotland this provision in the December 2021 UK SI: it makes provision so that lower risk SPS goods produced in Northern Ireland or the Republic of Ireland and moved or imported into Scotland from the Republic of Ireland are not subject to the pre-notification requirements which came into force from 1 January 2022 during the transitional staging period. The absence of such provision has not had any effect on trade as there are at present no established direct trade routes from the Republic of Ireland to Scotland. But Scottish Ministers consider that it is important to have the same import controls in place as the rest of GB, in particular to avoid any possible barriers to the movement of Northern Ireland goods or that importers are required to follow different processes in Scotland than

---

<sup>5</sup> S.S.I. 2021/297

<sup>6</sup> S.S.I. 2021/342

<sup>7</sup> S.S.I. 2021/432

<sup>8</sup> S.S.I. 2021/493

<sup>9</sup> S.I. 2021/1443

the rest of GB.

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

The law being amended by the regulations is:

- Regulation 2 amends provisions in the Trade in Animals and Related Products (Scotland) Regulations 2012<sup>10</sup> in relation to products of animal origin and other types of animal by-products.
- Regulation 3 amends Regulation (EU) 2017/625 to re-state provision made in the December 2021 SSI to exclude products within the scope of Article 7 (goods which form part of passengers' luggage and which are intended for personal consumption or use) or Article 10 (small consignments of products sent to natural persons which are not intended to be placed on the market) of Commission Delegated Regulation (EU) 2019/2122 from requirements for imports of products of animal origin and certain plants, plant products and other objects to be subject to prior notification during the transitional staging period. It also makes new provision so that goods which are produced in Northern Ireland or the Republic of Ireland and imported into Scotland from the Republic of Ireland are also excluded.

### **Reasons for and effect of the proposed change or changes on retained EU law**

Lower risk SPS goods produced in Northern Ireland or the Republic of Ireland arriving in Scotland from the Republic of Ireland will during the transitional staging period be exempt from pre-notification requirements introduced from 1 January 2022, in line with the position for equivalent goods movements into England and Wales as was given effect by the December 2021 UK SI.

### **Statements required by European Union (Withdrawal) Act 2018**

The Regulations are made in exercise of powers conferred by 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.

### **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 2022 do no more than is appropriate. This is the case because the Regulations make only necessary transitional amendments to ensure appropriate arrangements can be put in place for 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**

---

<sup>10</sup> S.S.I. 2012/177



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 to ensure the same import provisions apply across GB, 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 2022 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 2022 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 2022 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 2022 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 alter pre-notification requirements as part of the transitional staging period. Given that there are no established direct trade routes from the Republic of Ireland to Scotland the impact of the changes are limited.

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

Negative procedure is considered appropriate as the powers under the European Union (Withdrawal) Act 2018 are subject to negative procedure.

### **Consultation**

Defra undertook a consultation exercise in December 2021 on behalf of Scottish Ministers, summarising the changes to be made by the Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No. 3) Regulations 2021 and this instrument and inviting comments, in particular on the impact of revising the timeline for phased introduction of SPS checks, and on the potential impact if this instrument were not to be brought into force. The consultation was targeted at key stakeholders in the SPS sector, including representative trade and industry organisations, interest groups and Port Health Authorities. Over 120 organisations and individuals were consulted. At the close of consultation, Defra had received one response, which was supportive of the proposed measures and the swift laying of supportive legislation.

### **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  
March 2022