

Explanatory Memorandum to the Official Controls (Extension of Transitional Periods) (Amendment) (Wales) Regulations 2022

This Explanatory Memorandum has been prepared by the Rural Development & Legislation Division within the Department for Regional Investment and Borders of the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Official Controls (Extension of Transitional Periods) (Amendment) (Wales) Regulations 2022.

Vaughan Gething MS
Minister for Economy
15 December 2022

1. Description

1.1 The purpose of this instrument is to extend the post EU Exit Transitional Staging Period ('TSP') to enable additional time to develop and finalise proposals for the future borders regime that protects our biosecurity and supports trade, by ensuring that within Wales, and between Great Britain and the 'territory subject to special transitional import arrangements' as defined in Annex 6 to Regulation (EU) 2017/625 ("the Official Controls Regulation")¹, effective official border controls continue to operate following the end of the Transition Period.

1.2 The changes made by this instrument relate to controls on imports into Wales for the set of commodities known collectively as sanitary and phyto-sanitary ("SPS") goods.

1.3 This instrument amends the following regulations:

- The Official Controls (Extension of Transitional Periods) Regulations 2021
- The Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) Regulations 2021

2. Matters of special interest to the Legislation, Justice and Constitution Committee

2.1 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.

2.2 Those amendments included the introduction of a 'transitional staging period' for goods entering Great Britain from the EU and certain other countries. Provision was made for the end dates of those transitional periods to be changed by statutory instrument. This instrument is made in exercise of those powers, namely paragraph 2 of Annex 6 to, the Official Controls Regulation.

2.3 In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that this Instrument will come into force less than 21 days after the instrument has been laid. The legislation must come into force by 30 December to ensure the transitional staging period does not expire and so there is no gap in the transitional provisions. In addition, the legislation further amends the dates contained in the Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) Regulations 2021 to bring it into line with the new TSP date.

¹ 'territory' as defined in Annex 6 of 2020/1481 includes the European Union, EEA states, and other specified countries, referred to in this document as 'the European Union' or 'EU'

2.4 Without this legislation, and in the absence of border control posts, we would effectively be closing off trade routes into Wales for certain goods from 1 January 2023. Previously Regulations relating to the Transitional Staging Period (TSP) for goods entering Great Britain from the EU and certain other countries, have been introduced by the UK Government on behalf of Wales with the consent of Welsh Ministers. However, the Welsh Government took the decision that it would be preferable to legislate in Wales on this matter with coordination as far as possible on a GB basis. However, uncertainty with the UK Government has delayed ministerial meetings at which border policy, including the TSP extension, would be discussed. With uncertainty still present elsewhere it was not possible to wait any longer and the Welsh Government had to decide to press ahead with the introduction of Welsh Regulations at a much later date and stage than would normally be the case

3. Legislative background

- 3.1 Statutory instruments made and brought into force under EUWA powers (in late 2020), gave effect to the UK Government's decision to introduce checks on EU SPS imports in phases, following the end of the Transition Period on 31 December 2020. These included amendments to regulations governing Official Controls, trade in animals and related products, and plants and related products.
- 3.2 Those amendments included the introduction of a 'transitional staging period' for goods entering Great Britain from the EU and certain other countries. Provision was made for the end dates of those transitional periods to be changed by statutory instrument. This instrument is made in exercise of those powers, namely paragraph 2 of Annex 6 to, the Official Controls Regulation.
- 3.3 These dates outlined in the transitional staging period have been amended previously by the Trade and Official Controls (Transitional Arrangements for Prior Notifications) (Amendment) Regulations 2021 (S.I. 2021/429), the Official Controls (Extension of Transitional Periods) Regulations 2021 (S.I. 2021/809), the Official Controls (Extension of Transitional Periods) (England and Wales) (Amendment) Regulations 2021 (S.I. 2021/1096), the Official Controls (Extension of Transitional Periods) (England & Wales) (Amendment) (No.2) Regulations 2021 (S.I. 2021/1443) and the Official Controls (Extension of Transitional Periods) (Amendment) Regulations 2022 (S.I 2022/621).
- 3.4. On 28 April 2022, the UK Government announced its decision to revise the timetable for the introduction of all remaining import checks, with no further checks being introduced on EU goods in 2022. This decision is outlined in the Written Ministerial Statement published on that date which recognised that businesses have faced a range of challenges over recent months as they recover from the global pandemic, in addition to the general public being affected by rising costs caused by

Russia's war in Ukraine and energy prices. Therefore, remaining import checks would not come into force as planned from 1 July 2022.

- 3.5 The UK Government also announced a review of the GB border regime. The Welsh Government looks forward to analysing conclusions in its Target Operating Model once finalised and available, in order to assess the infrastructure requirements, resource implications and delivery timetable. Publication of a Target Operating Model is expected early next year, which will set out the new regime of border import controls. This will include a technologically advanced approach to controls, aiming to reduce friction and costs of trade for businesses. The Border Operating Model will also be updated to outline further phasing specific to SPS goods from the EU. Meanwhile it is necessary to legislate to delay the introduction of checks as it would otherwise be unlawful to import these goods into Welsh ports except through designated Border Control Posts which do not yet exist in Wales.
- 3.6 Importers will be anticipating this extension as the UK announcement committed to no new checks until the end of 2023 whilst current legislation postponing these checks expires on 31 December 2022. These checks are being postponed elsewhere in GB too.
- 3.7 An effect of this instrument is also to extend, until 31 January 2024, the exemptions from import checks for personal goods which form part of passengers' luggage (excluding plants for planting) and which are intended for personal consumption or use, small consignments of products sent to natural persons which are not intended to be placed on the market, and pre-notification requirements for certain goods which are produced in Northern Ireland or the Republic of Ireland and moved or imported into Great Britain from the Republic of Ireland.
- 3.8 Prohibitions and restrictions ("P&R") are requirements based in law that prevent or restrict the export and import of certain goods from third countries, where the importing country believes there is a potential for them to present a level of risk to animal, plant or public health.
- 3.9 To ensure continuity after the implementation period which followed the UK's departure from the EU, the Welsh Ministers introduced the Meat Preparations (Wales) (Amendment) Regulations 2022 (S.I. 2022/ 618 (W. 140)) to extend the permitted import of certain prohibited products of animal origin affected by P&R from the EEA into Wales from 30 June 2022 to 31 December 2022.

The suspension of the prohibition has previously been extended by the following instruments:

- The Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) (Amendment) Regulations 2021 (S.I. 2021/1 (W. 1)).

- The Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) (Amendment) Regulations 2021 (S.I. 2021/376 (W. 117)) were made, which extended the suspension of the prohibition until 30 September 2021.
- The Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/977 (W. 231)) to extend the suspension of the prohibition until 31 December 2021. This enabled existing import rules to apply to chilled meat preparations until 31 December 2021 in accordance with the UK Government’s announced ‘phased approach’ to import controls, and
- The Official Controls (Extension of Transitional Periods and Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/1480) (W. 382).

3.10 Those extensions enabled import rules to apply to chilled meat preparations in alignment with a GB-wide approach to border controls, and in accordance with equivalent extensions to the “transitional staging period” (“TSP”), as defined in paragraph 2 of Annex 6 to retained Regulation (EU) 2017/625. This Instrument, through exercise of the powers in paragraph 11A(1) of Schedule 2 to the Trade in Animals and Related Products (Wales) Regulations 2011 further amends the dates contained in the Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) Regulations 2021 to bring it into line with the new TSP date.

3.11 This instrument is subject to the negative resolution procedure.

4. Purpose and intended effect of the legislation

4.1 To give effect to the Welsh Government decision, on 30 December 2022, this instrument replaces the date for the ending of the transitional staging period, as set out in the Official Controls (Extension of Transitional Periods) Regulations 2021 so that no further import checks will come into force on SPS goods from the EU in 2023.

4.2 The Government’s decision to not introduce further checks on SPS goods during 2023 means that the following temporary policies are extended to 31 January 2024 through this instrument (with permanent policies to follow in due course):

- The suspension of the requirement for meat preparations imported into England from EEA member States, the Faroe Islands, Greenland, or Switzerland, to be deep frozen, keeping this temporary easement in line with the revised transitional staging period controls. This will allow meat preparations from these countries to continue to be imported in a chilled condition.
- Personal goods which form part of passengers’ luggage (excluding plants for planting) and which are intended for personal

consumption or use, and small consignments of products sent to natural persons which are not intended to be placed on the market are exempt from official controls.

- The exemption from prior notification (“pre-notification”) for certain goods which are produced in Northern Ireland or the Republic of Ireland and imported from the Republic of Ireland.

- 4.3 Without this instrument, attempting to comply with the requirement for deep freezing otherwise scheduled for 1 January 2023 would create a significant risk of sector confusion and disruption to the food supply chain into Great Britain.
- 4.4 Without this instrument, all SPS goods imported from EU to GB will be obliged to comply with documentary, physical and identity checks at Border Control Posts across Great Britain from 1 January 2023. Additionally, Export Health certificates and Phytosanitary certificates would be required for all animal products and regulated plants, plant products and other objects respectively.
- 4.5 Introducing controls in January 2023 would have replicated the controls that the EU applies to their global trade. This would have introduced complex and costly checks that would have then been altered later as our transformation programme is delivered. Therefore, the powers provided to change the end date for the transitional provisions must now be exercised, to revise the timeline for introduction of import controls for EU SPS goods as originally intended – that is, in a timeframe which was reasonable and achievable for the SPS imports sector, minimising the risk of food supply chain disruption.

5. Consultation

- 5.1 A consultation exercise was undertaken in October 2022, summarising the changes to be made to the transitional staging period by this instrument and inviting comments, on the impact of revising the timeline for phased introduction of SPS checks; the potential impact if this instrument were not to be brought into force.
- 5.2 The consultation was targeted at key stakeholders in the SPS sector, including representative trade and industry organisations, interest groups and Port Health Authorities. Over 65 organisations and individuals were consulted.
- 5.3 At the close of consultation, the Welsh Government had received 15 responses. These responses broadly understood the delay given the significance of full import checks and supply chain pressures. However, respondents expressed concern that businesses exporting SPS goods from GB to EU face full import controls, whilst EU goods are not subject to the same controls. Additionally, respondents expressed that biosecurity should continue to be maintained in the period before full import controls are applied and sufficient notice of implementation of full

import controls would be imperative to give businesses sufficient time to plan accordingly. <https://gov.wales/amendments-sanitary-and-phytosanitary-sps-rules-imports-eu-goods>

- 5.4 Both the UK and Scottish Governments have been consulted on the changes set out in this instrument. Both administrations support the need for this instrument at official policy level.

6. Regulatory Impact Assessment (RIA)

- 6.1 The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations. Officials consider this is part of the transition following the departure from the European Union into the UK's long-term border controls and imports regime

7. Costs and benefits

- 7.1. There are no direct costs associated with this instrument.

Benefits

- 7.2 The decision to revise the timetable once again for the introduction of all remaining import checks, is a significant step to ensure continued support for businesses; given the potential impact of full import checks and the possibility of supply chain pressures. In addition, the Welsh Government recognises that the general public is still being affected by rising costs caused by Russia's war in Ukraine and energy prices.

8. Competition Assessment

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No

The competition filter test	
Question	Answer yes or no
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

9. Post implementation review

9.1 This instrument will lapse on 31 January 2024. Importantly, we will be able to end the period earlier through another SI, or extend it again, if required once the TOM implementation date is known.