

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND NORTHERN IRELAND PROTOCOL

7760/22+ADD 1

C(2022)1804 FINAL+ANNEX

COMMISSION DELEGATED REGULATION (EU) .../... OF 28.3.2022 AMENDING DELEGATED REGULATION (EU) 2019/625 AS REGARDS COMBINED NOMENCLATURE AND HARMONISED SYSTEM CODES AND IMPORT CONDITIONS OF CERTAIN COMPOSITE PRODUCTS, AMENDING DELEGATED REGULATION (EU) 2019/2122 AS REGARDS CERTAIN GOODS AND PET BIRDS EXEMPTED FROM OFFICIAL CONTROLS AT BORDER CONTROL POSTS AND AMENDING DELEGATED REGULATION (EU) 2021/630 AS REGARDS REQUIREMENTS FOR COMPOSITE PRODUCTS EXEMPTED FROM OFFICIAL CONTROLS AT BORDER CONTROL POSTS

Submitted by the Department for Environment, Food and Rural Affairs

08 June 2022

SUBJECT MATTER

1. The Regulation amends three pieces of EU Regulation:

Regulation 2019/625 - requirements for entry into the EU of certain animals and goods for human consumption is amended as follows:

- Adds/removes some Combined Nomenclature codes to clarify the position for some goods to avoid ambiguity;
- Provides/clarifies the position for imports of vitamin D;
- Clarifies the position for imports of gelatine capsules, including the requirement for public health certification;
- Provides that bee pollen flour should be treated the same as other apiculture products and must come from an approved country and be accompanied by a health certificate;
- Updates the provision for products that may enter the EU and Northern Ireland from production areas that have not been classified by the competent authorities, to all echinoderms rather than only Holothuroidea (sea cucumbers);
- Due to the animal health risks associated with colostrum-based products, it is appropriate to require non-shelf stable composite product containing colostrum to come from countries approved for imports of colostrum and accompanied by a health certificate;

- Clarifies that residue plans are not required for imports of gelatine, collagen and highly refined products, including when they are used as ingredients in composite products;
- Clarifies that shelf stable composite products where the animal products are food enzymes, food additives, certain food flavourings or vitamin D3 do not have to come from an approved country or from a country with an approved residue plan;
- Clarification where a health certificate is required for certain composite products;
- Clarification where the Private Attestation is required for certain composite products;
- Removes references to legislation that was repealed by the Animal Health Regulation in April 2021.

Regulation 2019/2122 on certain categories of animals and products exempt from controls at the border is amended as follows

- Clarifies the requirements under which certain research and diagnostic samples should be imported including the documentary requirements and the countries from which they can be accepted;
- Clarification/correction of the requirements for goods sent to natural persons which are not intended to be placed on the market
- Updating legislation references for imports of pet birds;
- Amends the Annex of the Regulation to clarify that derogations for personal imports apply to:
 - 'Other infant formula' rather than 'infant food';
 - Products that are intended for use by passengers;
 - Petfood that is for 'health related reasons';
 - Petfood is for pets accompanying passengers.

Regulation 2021/630 on goods exempt from official controls at the border is amended as follows:

- Amends the requirement for shelf stable composite products that contain colostrum-based products to be subject to border controls;
- Adds shelf stable composite products that contain food enzymes, food additives, certain food flavourings or vitamin D3 to the list of products exempt from border controls;
- Corrects/updates references in the Regulation following amendments in this and to another Delegated Act to provide clarity.

SCRUTINY HISTORY

2. The Parliamentary scrutiny history relevant to this Explanatory Memorandum is contained in Annex A.

MINISTERIAL RESPONSIBILITY

3. Responsibility lies with the Secretary of State for Environment, Food and Rural Affairs in England.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

4. Devolved Administrations have been consulted. Welsh Government Officials have reviewed the instrument and the EM and note that the policy reflected in it is devolved. No other comments have been received.
5. Defra has followed the Common Framework approach in involving the Devolved Administrations. Under the Framework approach – pursuant to the Devolution Memorandum of Understanding of September 2012 – the UK Government is committed to involving the Scottish Government, Welsh Government and Northern Ireland counterparts as fully as possible in discussions about the formulation of the UK's policy position on all EU and international issues which touch on devolved matters. For non-devolved matters, the MoU commits within UK Government the Secretaries of State for Scotland, Wales and Northern Ireland to ensuring the interests of all parts of the UK in non-devolved matters are properly represented and considered.

LEGAL AND PROCEDURAL ISSUES

6.

i. Legal Base

The Regulation will be adopted under Article 48, points (b), (d), (e), (f) and (h), and Article 126(1) of Regulation (EU) 2017/625 (the Official Controls Regulation).

ii. Voting Procedure

Delegated act; enters into force if no objection expressed by European Parliament or Council within two months of notification.

iii. Timetable for adoption and implementation

The Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

POLICY IMPLICATIONS

7. This will impact Northern Ireland because they will have to implement the requirements in this legislation. Most of the changes introduced by this Regulation are for clarification purposes and do not fundamentally affect requirements for imports into the EU and Northern Ireland.
8. There are a couple of changes that may affect NI importers involving personal imports of medical foods and pet foods. The new rules mean that these provisions can only apply to passengers and pets accompanying passengers. In the past we in GB have made use of this provision to allow people to import specialist medical food e.g. foods with a high dairy content for treating medical conditions from outside the EU.
9. The changes in relation to samples provide clarity regarding the process by which small quantities of products of animal origin that will be used for taste testing or analysis can be exported without the need to certify animal health attestations in certain circumstances. Whilst stakeholders have welcomed recognition from the EU that this type of exports should be possible with fewer guarantees being provided, there remains some concern that the revised process is overly complex and traders may therefore choose to continue to use the current process.
10. We recognise that this is an example of the impact the Northern Ireland Protocol is having on the ground. The UK Government has been clear for some time that the Protocol has been causing serious problems. We will continue to talk with the EU and our preference is - and has always been - to reach a negotiated outcome with EU, while in parallel moving forward with our solution to protect peace in Northern Ireland. We remain open to continuing talks with the EU, while these continue, we will take steps to stabilise the situation in Northern Ireland and bring parity to everyone living the UK

CONSULTATION

11. The changes to the requirements for imports of Vitamin D3 provide clarity on which the industry has been lobbying the European Commission for some time. This also applies to certain products containing enzymes, food additives and flavourings. Both UK and EU stakeholders have welcomed the confirmation that shelf-stable composite products containing Vitamin D3 as their only product of animal origin will be exempted from the requirement to move into the EU and NI with a Private Attestation. They remain concerned about the potential for vitamin D3 as a POAO to require an Export Health Certificate, a matter which this regulation does not clarify.

FINANCIAL IMPLICATIONS

12. We are not aware of any financial implications.

Richard Benyon.

**THE RT HON LORD BENYON
PARLIAMENTARY UNDER SECRETARY OF STATE (MINISTER FOR RURAL
AFFAIRS AND BIOSECURITY)
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**

PARLIAMENTARY SCRUTINY HISTORY RELEVANT TO A:

COMMISSION DELEGATED REGULATION (EU) .../... OF 28.3.2022 AMENDING DELEGATED REGULATION (EU) 2019/625 AS REGARDS COMBINED NOMENCLATURE AND HARMONISED SYSTEM CODES AND IMPORT CONDITIONS OF CERTAIN COMPOSITE PRODUCTS, AMENDING DELEGATED REGULATION (EU) 2019/2122 AS REGARDS CERTAIN GOODS AND PET BIRDS EXEMPTED FROM OFFICIAL CONTROLS AT BORDER CONTROL POSTS AND AMENDING DELEGATED REGULATION (EU) 2021/630 AS REGARDS REQUIREMENTS FOR COMPOSITE PRODUCTS EXEMPTED FROM OFFICIAL CONTROLS AT BORDER CONTROL POSTS (AND ADD 1)

EM 10888/21,C(2021) 4298 FINAL:COMMISSION DELEGATED REGULATION (EU) .../... OF 13.7.2021 AMENDING DELEGATED REGULATION (EU) 2020/692 AS REGARDS THE ANIMAL HEALTH REQUIREMENTS FOR THE ENTRY INTO THE UNION OF PRODUCTS OF ANIMAL ORIGIN CONTAINED IN COMPOSITE PRODUCTS

DATE DEFRA EM SIGNED: 02/09/2021

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS		LORDS
SCRUTINY (OUTCOME 22/9/21)	COMPLETED AGENDA NO 15	DRAWN TO THE ATTENTION OF THE PROTOCOL ON IRELAND/NORTHERN IRELAND SUB-COMMITTEE (AT CHAIR'S SIFT NO 7; 16/9/21)

5851/21,C(2021) 428 FINAL: COMMISSION DELEGATED REGULATION (EU) .../... OF 1.2.2021 AMENDING DELEGATED REGULATION (EU) 2019/625 AS REGARDS IMPORT CONDITIONS FOR LIVE SNAILS, FOR COMPOSITE PRODUCTS AND FOR CASINGS PLACED ON THE MARKET FOR HUMAN CONSUMPTION

DATE DEFRA EM SIGNED: 08/03/2021

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
SCRUTINY COMPLETED (OUTCOME AGENDA NO 4 26/5/21)	SIFTED FOR INFORMATION TO THE PROTOCOL ON IRELAND/NORTHERN IRELAND SUB-COMMITTEE (AT CHAIR'S SIFT 1 22/4/2021)

COM(2020) 756 FINAL: REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL ON THE OVERALL OPERATION OF OFFICIAL CONTROLS PERFORMED IN MEMBER STATES (2017-2018) TO ENSURE THE APPLICATION OF FOOD AND FEED LAW, RULES ON ANIMAL HEALTH AND WELFARE, PLANT HEALTH AND PLANT PROTECTION PRODUCTS

SWD(2020)283 FINAL: COMMISSION STAFF WORKING DOCUMENT ACCOMPANYING THE DOCUMENT REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL ON THE OVERALL OPERATION OF OFFICIAL CONTROLS PERFORMED IN MEMBER STATES (2017-2018) TO ENSURE THE APPLICATION OF FOOD AND FEED LAW, RULES ON ANIMAL HEALTH AND WELFARE, PLANT HEALTH AND PLANT PROTECTION PRODUCTS

DATE DEFRA EM SIGNED: 08/12/2020

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
CLEARED AS NOT IMPORTANT (ESC OUTCOME AGENDA 33) 20/1/2021	NOT CLEARED

EM 12306/18, COM(2018) 627 FINAL: REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL ON THE OVERALL OPERATION OF OFFICIAL CONTROLS PERFORMED IN MEMBER STATES (2014-2016) TO ENSURE THE VERIFICATION OF COMPLIANCE WITH FOOD AND FEED LAW, ANIMAL HEALTH AND WELFARE RULES

12306/18 ADD, SWD(2018) 402 FINAL: COMMISSION STAFF WORKING DOCUMENT ACCOMPANYING THE DOCUMENT REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND TO THE COUNCIL ON THE OVERALL OPERATION OF OFFICIAL CONTROLS PERFORMED IN MEMBER STATES (2014-2016) TO ENSURE THE VERIFICATION OF COMPLIANCE WITH FOOD AND FEED LAW, ANIMAL HEALTH AND WELFARE RULES

DATE DEFRA EM SIGNED: 05/10/2018

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
NOT IMPORTANT CLEARED (AGENDA FOR REPORT NO 41;24/10/2018)	CLEARED (ENERGY AND ENVIRONMENT) AT CHAIRMAN'S SIFT 1709 - 17/10/2018

FSA EM 9464/13, COM (2013) 265 FINAL: DRAFT INSTRUMENT CONCERNING A PROPOSAL FOR A REGULATION 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, PLANT REPRODUCTIVE MATERIAL AND PLANT PROTECTION PRODUCTS

DATE EM SIGNED: 03/6/2013

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
REPORT NO: 09 DATED: 10/07/2013: RECOMMEND: LPINC	SIFT NO: 1508: DATED: 11/06/2013 FINIAL CLEARED ON 14/11/2016
REPORT NO: 39 DATED: 24/03/2015: RECOMMEND: LPINC	
REPORT NO: 07: DATED: 28/10/2015: RECOMMEND: LPIC	

FSA EM 8198/12, COM (2012) 122 FINAL: REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND TO THE COUNCIL ON THE OVERALL OPERATION OF OFFICIAL CONTROLS IN THE MEMBER STATES ON FOOD SAFETY, ANIMAL HEALTH AND ANIMAL WELFARE, AND PLANT HEALTH

DATE EM SIGNED: 18/04/2012

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
REPORT NO: 64	SIFT NO: 1464
DATED: 25/04/2012	DATED 25/04/2012
NIC	CLEARED

FSA EM 11948/09, COM (2009) 334 FINAL: REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND TO THE COUNCIL ON THE APPLICATION OF REGULATION (EC) NO 882/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 29 APRIL 2004 ON OFFICIAL CONTROLS PERFORMED TO ENSURE THE VERIFICATION OF COMPLIANCE WITH FEED AND FOOD LAW, ANIMAL HEALTH AND WELFARE RULES

DATE EM SIGNED: 04/08/2009

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
REPORT NO: 29	SIFT NO: 1367
DATED: 14/10/2009	DATED: 28/08/2009
OUTCOME: NIC	CLEARED