

EXPLANATORY MEMORANDUM TO
THE OFFICIAL CONTROLS (FEES AND CHARGES) (AMENDMENT)
REGULATIONS 2024

2024 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to enable fees and charges for official controls to reflect changes to the sanitary and phytosanitary (“SPS”) border official controls regime, as published in the Border Target Operating Model (“BTOM”) in August 2023 ([The Border Target Operating Model: August 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/the-border-target-operating-model-august-2023)).
- 2.2 The instrument amends Regulation (EU) 2017/625 (“the Official Controls Regulation”), to facilitate flexibility in the application of fees and charging requirements across all competent authorities (“CAs”) when conducting official controls on SPS goods arriving in Great Britain; thereby, safeguarding the financial sustainability of CAs and Government owned Border Control Posts (“BCPs”), and enabling the application of risk factors set out in the BTOM.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales, and Scotland.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State, at the Department for Environment, Food and Rural Affairs, Lord Douglas-Miller has made the following statement regarding Human Rights:

“In my view the provisions of the Official Controls (Fees and Charges) (Amendment) Regulations 2024 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The amendments introduced by this instrument are needed to deliver the Government’s policy as expressed in the BTOM, specifically in relation to charging under the new SPS border official controls regime.

- 6.2 This instrument uses powers conferred by section 14(2) and (3) of the Retained EU Law (Revocation and Reform) Act 2023 to amend the Official Controls Regulation.
- 6.3 The principal legislation governing fees and charges for controls on movement into Great Britain of SPS goods is set out in assimilated law, namely Chapter 6 of the Official Controls Regulation. The Official Controls Regulation sets out official controls for SPS goods and how these should be delivered, including provisions for the calculation and payments of fees and charges for official controls.
- 6.4 Under powers conferred by the European Union (Withdrawal) Act 2018, this assimilated law was amended where necessary, in order to address failures in assimilated law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

7. Policy background

What is being done and why?

- 7.1 On 28 April 2022, the UK Government announced a pause to the introduction of further import controls on SPS goods from the EU to Great Britain, and its intention to develop a Target Operating Model setting out a new regime of border import controls. The intended changes to the SPS border official controls regime were published in the BTOM in August 2023. This new regime will apply equally to EU and goods from the rest of the world, with a proportionate risk-based and technologically advanced approach to controls.
- 7.2 The intention of this instrument is to facilitate the implementation of the BTOM. Amendments are needed to enable CAs to administer charges and fees for official controls on SPS goods in a way which reflects the new regime.
- 7.3 This instrument changes the duty to charge to a power to charge by extending the circumstances in which the CA may reduce charges or waive them altogether. The implementation of the BTOM is reliant on flexible application of risk, on-going financial viability of CAs and proportionate financial liability across stakeholder and operators. Changing the duty facilitates this desired flexibility.
- 7.4 This instrument enables fees and charges to be levied away from a BCP. Currently all consignments must attend a BCP, and Article 79(1) of the Official Controls Regulation suggests this is where the fees and charges will be levied. But under the BTOM, not all consignments will be required to attend a BCP. Therefore, CAs will need the flexibility to levy fees and charges digitally and without the consignment being physically at the BCP.
- 7.5 Article 81 of the Official Controls Regulation currently contains a list of costs that CAs can use to determine fees and charges. This instrument introduces greater flexibility on the composition of fees and charges, whilst maintaining the requirement to not charge more than is necessary to recover costs. This will allow CAs to recover costs for items that are not currently in scope of Article 81 and enables the application of risk factors set out in the BTOM.
- 7.6 Article 82 of the Official Controls Regulation currently provides two methods for calculating the fees or charges for official controls. The ways can be used individually or as a combination. The methods are:
- (a) at a flat rate as a mean average of the overall costs of official controls borne by CAs over a given period of time; or

(b) on the basis of the actual costs of each official control.

This instrument amends the provisions for calculation (a), by ensuring it is clear that the calculation can be based upon a set of flat rates; and making it explicit that the charge could be either a single charge or collection of charges. Additionally, this instrument allows calculations based upon costs borne by CAs collectively (with agreement). This enables CAs to pool costs for the purpose of administering a consistent charging model; and, specifically, a collection mechanism across Government owned BCPs.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This is not a consolidation instrument.

10. Consultation outcome

10.1 No consultation has taken place on this instrument as there is no statutory or common law duty to consult. The instrument amends existing powers but does not introduce anything that directly impacts businesses.

11. Guidance

11.1 There is no specific guidance necessary for this instrument. Guidance on the overall BTOM can be found on gov.uk: [The Border Target Operating Model: August 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/the-border-target-operating-model-august-2023-gov-uk).

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument for two reasons:

(a) this instrument does not implement new policy; and

(b) this instrument will facilitate policies that are outside the scope of the definition of a 'regulatory provision' within the Better Regulation Framework ([Better Regulation Framework - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/better-regulation-framework)). This is because it relates to charges, which are covered by an exemption (2.3) in the Better Regulation Framework.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. However, the instrument is not introducing new policy but instead introduces flexibilities for how it is implemented. Some of these flexibilities will be beneficial to small businesses.

14. Monitoring & review

14.1 No specific monitoring arrangements are needed as this instrument does not set out new policy.

15. Contact

- 15.1 Lucas Metcalfe at the Department for Environment, Food and Rural Affairs, Email: lucas.metcalfe@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Spencer Draper, Project Director, Border Infrastructure, Biosecurity, Borders and Trade Directorate, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Douglas-Miller, Parliamentary Under Secretary of State, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.