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Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd



Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru
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20th February 2024

Dear Huw

Further to your letter of the 31 January 2024 regarding The Official Controls (Extension of Transitional Periods) (Miscellaneous Amendments) Regulations 2024 which were laid by the UK Government on the 9 January and came into force on the 31 January 2024, please see my response to your questions at Annex 1.

Yours sincerely,

Lesley Griffiths AS/MS
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Annex 1

- 1. You state in your letter that the statutory instrument will be the first piece of legislation to implement the first milestone of the TOM from 31 January 2024. Could you provide further information in respect of legislation anticipated to be required to reach future milestones?**

There will be further legislation to implement the policy changes outlined in the Border Target Operating Model which are due to take effect from April 2024 and legislation over a longer timeframe to implement provisions originally scheduled for a bill in the UK Parliament. Amongst the former will be a further extension to the Transitional Staging Period to delay the application of controls in relation to goods moving to Great Britain from Ireland until a date yet to be agreed. I anticipate that many of these will be made on a GB-wide basis but will seek advice on any new legislation and inform the relevant Senedd Committees. Please see Annex 2 for further information.

There will also be changes to the Qualifying Northern Ireland Goods legislation to ensure the benefit is more squarely focused on Northern Ireland and afford Qualifying Goods unfettered access to the GB market via Ireland. Conversely, there will need to be legislation to ensure that non-qualifying goods such as Irish or EU goods which are routed through Northern Ireland are subject to checks.

- 2. You state in your letter that it was not possible to give my Committee advance notice of your intention to consent to the Regulations as the statutory instrument was received during recess. Could you indicate whether you were given advance notice by the UK Government of the proposed scope of these regulations, and if so, when you were provided with this notice?**

The Welsh Government was aware of the need to bring forward this statutory instrument as Welsh Ministers agreed the publication of the BTOM on 29 August 2023, which set out the expected timeline for introducing the TOM. However, my officials then had to ensure the relevant statutory instrument was fit for purpose and that the instrument did not impact on the Senedd's legislative competence, or the Welsh Ministers' executive competence. This was only possible once they had received sight of the final draft instrument. Whilst we will consider each piece of legislation on its merits, I anticipate going forward we will take a GB-wide approach to the remaining legislation to implement the Border Target Operating Model.

- 3. You have previously exchanged correspondence with my Committee on the relationship between official controls regulations and international obligations, particularly to WTO rules and the UK-EU Trade and Cooperation Agreement. You raised concerns that the current position may be incompatible with the UK's obligations but that this was a temporary position and that the risks of this incompatibility did not fall to the Welsh Ministers. Could you provide an update on whether and how these regulations develop this position?**

The UKG has submitted several notifications in relation to the BTOM to WTO members and, to date, no specific trade concerns have been raised. The UK Government continues to engage with WTO and EU members on matters relating to the Border Target Operating Model and we have not been made aware of any specific concerns about this legislation but will continue to notify and engage with WTO and EU members on plans for the implementation of the BTOM.

Annex 2

Expected legislative approach.

The UK Govt expects to deliver the majority of the BTOM (subject to the consent of Welsh Ministers) using six cross policy SIs (including the SI you are corresponding over) to be laid in sequence as below (list may be subject to change, including additional statutory instruments).

SI	Timing	Content
Made Negative	Laying 9 January 2024 CIF 31 January 2024	The Official Controls (Extension of Transitional Periods) (Miscellaneous Amendments) Regulations 2023 This SI will introduce certificates on certain medium risk goods from the EU, end the exemption of goods moving from the island of Ireland to GB from prenotification requirements and extend the TSP until 29 April 2024.
PH/050 Made Negative	Laying 4 April 2024 CIF 30 April 2024	The Official Controls and Phytosanitary Conditions (Amendment) Regulations 2024 (TBC) TOM applies to RoW goods and identity and physical checks are applied to EU goods based on risk. This is done through use of the TSP and pre-existing powers until amendments have been made to the OCR.
OFC/016 Draft Affirmative	Laying 26 February CIF 30 April 2024	The draft Official Controls (Fees and Charges) (Amendment) Regulations 2024 (TBC) This SI uses sections 14(2) and (3) of the REUL Act to amend the OCR. It introduces greater flexibility on the application and composition of fees and charges, whilst maintaining the requirement of cost-recovery. It enables competent authorities to administer a consistent charging model across government-run BCPs in GB.
OFC/017 Draft Affirmative	Laying 20 May 2024 CIF 8 July 2024	The Official Controls (Border Target Operating Model) Regulations 2024 Amends OCR to ensure powers are available to deliver the TOM on a long term basis and update over time, allowing for risk categorisation for animal products, checks away from the border etc.
AH/055 Made Negative	Laying 9 Oct 2024 CIF 31 October 2024	The Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (No.1) Regulations 2024 (TBC) Regulations are made using amended powers in the OCR following OFC/017.
OFC/011 Made Negative	TBC end 2024/early 2025	The Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (No.2) Regulations 2024 (TBC) Regulations are made using amended powers in the OCR following OFC/017.