

STATES OF JERSEY



DRAFT OFFICIAL CONTROLS (ANIMALS, FOOD, FEED, AND PLANT HEALTH ETC.) (JERSEY) REGULATIONS 202- (P.114/2021): COMMENTS

**Presented to the States on 3rd February 2022
by the Environment, Housing and Infrastructure Scrutiny Panel
Earliest date for debate: 8th February 2022**

STATES GREFFE

COMMENTS

Background

The Draft Official Controls (Animals, Food, Feed, and Plant Health etc.) (Jersey) Regulations 202- (hereinafter the “draft OCR”) [[P.114/2021](#)] was lodged au Greffe on 9th December 2021 by the Minister for the Environment to repeal and replace the existent EU Legislation (Official Controls) (Jersey) Regulations 2020. The proposition is scheduled for States’ debate on 8th February 2022.

Panel Briefing and Hearing

The Environment, Housing and Infrastructure Panel, (hereinafter the “Panel”) was briefed¹ on the draft OCR by the Minister for the Environment and his Officers on Tuesday 9th November 2021, ahead of the States Assembly debate. The Panel wrote to the Minister for the Environment with questions and received a response² in writing on 17th November 2021 as well as a further written response on 24th January 2022³. The Panel also questioned the Minister for the Environment on the draft OCR during its Public Quarterly Hearing⁴ held on 7th December 2021.

During the briefing, the Panel was informed that prior to the UK’s departure from the European Union (EU) (‘Brexit’), the import and export of sanitary and phytosanitary (SPS) products in Jersey was set out in Regulation (EU) 2017/625, which was extended to Jersey under Protocol 3 of the UK’s 1972 Accession Treaty. Due to the evolving border regime negotiated between the UK and the EU following Brexit, SPS goods arriving in Jersey from the EU are now treated differently from those arriving from the UK. The Panel learned that the draft OCR is intended to repeal and replace the existent EU Legislation (Official Controls) (Jersey) Regulations 2020, which had until now allowed Jersey to keep within the EU trading regimes without incurring additional checks.

The Panel was advised that the draft OCR has been designed to allow for flexibility in how differences in the trading regime with the EU are turned on or off, including allowing for the possibility to turn on checks, certification and notification on SPS goods arriving from the EU (mainly France). The Panel noted that the extent to which some of these checks will be implemented is unknown as much depends on the outcome of negotiations between Jersey and the UK over the extent of Jersey’s system of border controls. The Panel was informed that the intention behind the draft OCR is to allow free and unfettered trade with UK to continue with minimal impediments to trade with the EU. It was emphasised that the draft OCR will allow for these trading conditions to be defined by Jersey, rather than defined by the UK on Jersey’s behalf.

During a public hearing with the Minister for the Environment, the Panel sought further detail on the status of the negotiations underway with the UK to ensure Jersey’s trade links with France are not disproportionately affected by the UK/EU trade arrangements. The Panel was informed that Jersey was in control of its own borders as was the UK

¹ [Environment, Housing and Infrastructure Panel Meeting Minutes – 9th November 2021](#)

² [Letter – Minister for the Environment – 17th November 2021](#)

³ [Letter – Minister for the Environment – 24th January 2022](#)

⁴ [Public Hearing with the Minister for the Environment – 7th December 2021](#)

and the EU. The purpose of the negotiations between Jersey and the UK were further explained as follows:⁵

Consultant Working on the Official Controls Regulations:

The negotiation with the U.K. relates really to whether or not they accept that our controls are sufficient for incoming goods from France; that they do not need to apply additional controls for north-bound goods from Jersey. Those negotiations are being done in parallel and conjunction with Guernsey, so we are hand in hand with Guernsey on this.

The Panel was informed that the negotiations also involved consideration for the landing position and that small scale additions to Jersey's existing infrastructure was proposed, instead of the requirement for large scale infrastructure and a full Border Control Post in Jersey.⁶

Consultant Working on the Official Controls Regulations:

...we are pushing, as it were, for an end point and a landing position now in those negotiations and we are quite positive. The starting point would be that we would have to create a full border control post, large scale infrastructure on the Island. We have moved away from that. We are now talking about inspections and point of destination for live animals, for example. We are talking about small scale additions to existing infrastructure on the Island so that we can simply, as it were, dip into incoming freight and make inspections of that. Generally I would say those negotiations are going well.

Import of Pets

The Panel questioned whether the draft OCR affect both plants and animal imports and asked for more information as to whether this included the trade of domestic pets. It was explained that the draft OCR is mainly concerned with controlling the entry of products of animal origin and plants into Jersey's territory. Domestic pets will not be affected, unless in a consignment (for example, a number of stray animals being re-homed from within the EU). However, the veterinary treatment of horses in France would be affected by the implementation of the draft OCR.

Bearing in mind that charitable organisations bring in consignments of rescue dogs and cats from the EU to rehome in Jersey, the Panel sought to understand what effect the regulations will have on the charitable work of these organisations and asked this of the Minister for the Environment during the public hearing.⁷

Chief Veterinary Officer and States Veterinary Officer, Animal Health and Welfare:

I think there are 2 things it is worth possibly distinguishing between. The movement of pet animals by their owners as pets is not a commercial activity and that continues under the pet scheme, although there are issues with the passports. Commercial dogs come under commercial controls and they will be

⁵ [Public Hearing with the Minister for the Environment – 7th December 2021](#)

⁶ [Public Hearing with the Minister for the Environment – 7th December 2021](#)

⁷ [Public Hearing with the Minister for the Environment – 7th December 2021](#)

required to have a health certification. They are required to have health certification already, so that is not a change for them. What is a change is they will have to go through some form of official control point when they come in. But we are still working through the details of this with the United Kingdom authorities because they have not yet decided exactly what they want to do about this. We are not minded to have any more severe controls on this than our colleagues would have in the U.K.

Import of Animal Feed and Fertilisers

In a letter to the Minister for the Environment the Panel requested clarity on the position in relation to the import of animal feed and fertilisers from the EU under the proposed Official Controls. The following response was received: ⁸

Minister for the Environment:

The OCR is part of the Safer Rules for Safer Foods package of Regulations and therefore does not cover the importation of fertilisers. The Importation of fertilisers is regulated in Jersey by the Water Pollution (Jersey) Law 2000. In respect of animal feed, the OCR will ensure that imports into the island are in compliance within internationally accepted standards.

Timings

The Panel noted that the UK had delayed the implementation of its own post-Brexit border controls on agri-food imports with the EU and questioned whether this had implications for Jersey. It was explained that the UK had twice delayed introducing full controls, with partial controls due to be in place by 1st January 2022, and full controls in place by July 2022. The Panel was advised that the UK has decided on a phased introduction of controls to avoid incorrectly certified consignments of SPS goods being turned away at the border and is handling each case individually, rather than applying blanket measures. The Panel heard that it would be advantageous if Jersey could demonstrate willingness to follow the UK's example in implementing its own draft OCR on a similar timescale.⁹

Impact on Industry

The Panel asked about the volume and nature of EU goods currently being imported into Jersey, and noted that at present, a relatively small but significant number of traders import SPS goods from the EU (e.g., diaspora community businesses importing food from Poland, Portugal and France for sale in Jersey). It was emphasised that the draft OCR will allow for flexibility should it be necessary to increase the volume of SPS imports from France in future. For example, in the event of the UK-Jersey supply chain being disrupted. The Panel heard that a number of major retailers are currently considering the need to develop stronger trade links with France.

The Panel questioned whether the draft OCR would present additional costs for small businesses importing from the EU. It was explained that because the draft OCR provide the Minister with powers to introduce requirements for notification and certification on

⁸ [Letter – Minister for the Environment – 17th November 2021](#)

⁹ [Environment, Housing and Infrastructure Panel Meeting Minutes – 9th November 2021](#)

SPS goods, there is likely to be a resultant cost that will be passed on to importers. The Panel heard that the requirement to have SPS goods certified by a vet was one example of where additional costs might arise. It was explained that by introducing nuanced Regulations that reflect the relatively small volume of EU goods arriving in Jersey (rather than adopting the UK's border control approach wholesale) it was hoped that costs to importers could be minimised.

The Panel noted that if Jersey were not to act to introduce its own SPS border controls, there was a risk that the UK could apply its own Regulations to goods traded Northbound, effectively re-classifying any SPS goods traded from Jersey to the UK as an export. In this event, goods would be re-directed to a Border Control Post (BCP) in the UK and require pre-notification and pre-certification checks. The Panel was advised that it was preferable to tolerate additional costs to the EU trade route rather than impede the Jersey-UK trade route.¹⁰

With consideration to Jersey's businesses who import small amounts of foodstuffs from the EU, the Panel raised this aspect further during the public hearing and questioned what effect the regulations will have on smaller import businesses.¹¹

Consultant Working on the Official Controls Regulations:

The O.C.R. (Official Controls Regulations), as it is established within the E.U. and within the U.K., is good for big businesses. It is not good for small businesses. It is designed for large scale, large volume imports of single commodities. It does not work particularly well for smaller scale, small imports of mixed commodities... What we are trying to do is twofold here: firstly, we want the infrastructure to be suitable for smaller scale businesses and, secondly, part of the negotiation with the U.K. is that, ultimately, we want a bureaucratic system which does not penalise small scale importers.

It was emphasised that the intention was not to impede trade through bureaucracy on cost to businesses and that if the draft OCR were applied exactly as they were to be, it could potentially decimate Jersey imports from France and would be very difficult to run the Norman market. It was further explained that a balance would need to be achieved and that could potentially be done through reducing import and bureaucratic costs. However, it was highlighted that the balance would not be achieved through industry support but rather through the negotiations with the UK.¹²

Consultant Working on the Official Controls Regulations:

...It is a case of balancing these out. I think we can get somewhere with reducing those import costs and those bureaucratic costs but it is not through support to industry, it is through negotiation with the U.K., so that we establish something which is appropriate for Jersey and which takes into account the fact that Jersey has, as it were, an unseen border with the U.K. for a northbound route in that we have a limited number of freight providers, only a single substantial ferry route and we have a fair distance in terms of there is a large body of water there. We can control the northbound route almost by default

¹⁰ [Environment, Housing and Infrastructure Panel Meeting Minutes – 9th November 2021](#)

¹¹ [Public Hearing with the Minister for the Environment – 7th December 2021](#)

¹² [Public Hearing with the Minister for the Environment – 7th December 2021](#)

and I think can justify, as it were, a softer bureaucratic approach from the south-bound route that should be acceptable to the U.K.

The Panel sought to explore any support that would be made available to small traders importing goods from the EU who may be faced with additional costs and bureaucracy. The Minister was unable to provide any reassurance that support would be made available, however, noted that additional cost and inconvenience would result from the regulations. The Director for Natural Environment and Acting Group Director for Regulations explained the following:¹³

Director for Natural Environment and Acting Group Director for Regulation:

As to supports, I would agree that it is likely that there will be supports will be required; that is not the game we are in but we are in discussions with our Economic Development colleagues, just general ongoing discussions. But as our colleagues on the call have said, because of the delay in implementation in the U.K. it is difficult to establish exactly what ... therefore, what implementation we are going to require here, it is difficult to know quite what that level of support would be required and so that is an ongoing conversation.

Border Control Post

The Panel asked about the timeline for implementing the draft OCR and whether Jersey was up to speed with the UK in terms of the implementation of the revised border controls. It was explained that, if the implementation of the draft OCR was significantly delayed, the EU trade route would continue to operate unimpeded, but to allow this to continue would negatively impact Jersey's relations with the UK. The Panel was advised that seeking to create a more flexible import regime for EU goods arriving in Jersey could be perceived as a challenge to the UK's negotiating position, but heard that in negotiations with the UK, the need to introduce proportionate controls for Jersey's size and scale had been upheld. It was explained that, should the UK settle on a position that requires all SPS goods arriving from the EU to be directed to a Border Control Post - and this ruling was also applied to Jersey - it would be possible for Jersey to respond by defining BCPs in a different way to the UK to reflect the smaller scale of importation involved.

The Panel probed how quickly the introduction of a BCP in Jersey could be achieved, should this be required by the UK at short notice. The Panel was advised that a delegation from the Department for Environment, Food & Rural Affairs (DEFRA) came to Jersey recently to inspect the potential for a small BCP to be installed at the Harbour, in the form of an extension to the Ferryspeed terminal. If necessary, this could be in place by the time BCP requirements are due to be in place in the UK (July 2022).

It was further highlighted that the requirement for live animals (equines) to be processed through a BCP could be avoided in the Jersey context by using an appropriate licensing regime instead. The Panel was informed that the UK's Chief Veterinary Officer had considered both approaches as satisfactory, but ongoing negotiations were taking place with DEFRA policy officers to confirm this.¹⁴

¹³ [Public Hearing with the Minister for the Environment – 7th December 2021](#)

¹⁴ [Environment, Housing and Infrastructure Panel Meeting Minutes – 9th November 2021](#)

The discussions with DEFRA were expanded on further during the public hearing. The following was explained to the Panel:¹⁵

Director for Natural Environment and Acting Group Director for Regulation:

We have very much been focusing on the practicalities of the discussions between us, D.E.F.R.A. (Department for Environment, Food and Rural Affairs) and A.P.H.A. (Animal and Plant Health Agency) to establish what we need going forward. Rather than spending multimillion pounds on what could be quite a large and sizeable facility at the port, or indeed away from the port, we, through the auspices of the work that has been facilitated by Steve and Courtenay(?) and Stewart and our wider team, have created good relationships with senior players in D.E.F.R.A., A.P.H.A., got them to understand the picture in terms of scale of business of materials emanating from Europe through to Jersey. They have visited the sites, we have visited their sites to establish that an alternative is not, as was initially envisaged, entirely unfeasible...

Joint Working with Guernsey

The Panel questioned what Guernsey's current position was on this issue. The Panel was informed that negotiations with the UK have been undertaken jointly between Jersey and Guernsey, and that both islands are aligned in terms of seeking an approach which allows for more autonomy from the UK's own controls but is broadly consistent with the UK's position. The Panel heard that Law and Policy Officers from both islands continue to speak weekly to progress work in this area. It was again emphasised that the introduction of the draft OCR would reassure third party countries (other than the UK and the EU) that Jersey is a trustworthy jurisdiction to deal with in terms of importing and exporting SPS goods.¹⁶

Genetically Modified Organisms

The Miscellaneous Provisions of the draft OCR were then highlighted, and it was explained that these implement six other EU Regulations which together create the framework for control that underpins third country listing for exports. In particular, Regulation (EC) No 1831/2003 was highlighted, as it concerns the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms (GMOs). This Regulation also creates powers for the Minister to introduce a labelling requirement concerning GMO products in future if required.

The Panel asked about the implications for Jersey should the UK shift position towards accepting GMOs in imported food. It was stated that discussions with Law Officers were ongoing in this area, and negotiations with the UK had emphasised Jersey's stringent desire to retain autonomy on this issue. The Panel was advised that if the UK did accept GMO foodstuffs and these were introduced via the service sector unsighted, it would be difficult for Jersey to manage and prohibit the goods being imported from entering the supply chain locally. The Panel heard that this could be countered by introducing a requirement to include "means of production" on imported food labelling, so that retailers and outlets would be compelled to inform customers of the presence of

¹⁵ [Public Hearing with the Minister for the Environment – 7th December 2021](#)

¹⁶ [Environment, Housing and Infrastructure Panel Meeting Minutes – 9th November 2021](#)

GMO in goods on sale. It was further explained that a move by the UK to de-regulate in terms of allowing GMO imports would present a challenge for Jersey, but that introducing appropriate food labelling controls would allow the greatest opportunity to take a different stance. The Panel was informed that a public consultation would be held to gauge Islander's concerns with regards to GMO in foodstuffs prior to introducing any labelling requirements.

The Panel learned that it was not possible under WTO rules to enforce restrictive food labelling on goods exported from countries that allowed GMOs in food production without also applying this to imports from non-GMO countries, as this would be construed as unfair. However, it was emphasised that it was in the best of interests of countries with GMO food production to ensure that products destined for non-GMO markets did not accidentally include traces of GMOs, as this would cause significant reputational damage. The Panel noted that the USA and New Zealand produce hormone free beef and lamb respectively for the EU market, and the means of production is kept entirely separate to ensure international SPS controls are not breached.¹⁷

Faroe Islands

The Panel noted that the Faroe Islands were listed as “territory subject to special import arrangements” in the draft OCR (Regulation 1(a)(ii)) and questioned the implications of enshrining this relationship in the draft OCR, given the recent concern about the Faroe Island's fishing activities. It was explained that as Jersey does not directly import volumes of fish from the Faroe Islands, and was unlikely ever to do so in the future, that this definition was included as a technical requirement under World Trade Organisation (WTO) rules, rather than an indication of a future trading relationship.

Consultation with Industry

The Panel asked how much industry consultation had taken place during the drafting of the OCR, given that its introduction was likely to affect the shellfish industry in terms of importing seed pearls from Ireland and France. It was stated that the needs of the shellfish industry had been taken into account and that the draft OCR updated the current trading framework to allow trade to carry on as normal, whilst giving the Minister for the Environment flexibility to adjust to Jersey-specific requirements in future. The Panel heard that discussions with businesses importing goods from Poland and France were underway to discuss the need for certification, if and when UK protocols change.

The Panel asked what implications the draft OCR will have for the continuation of the Le Marchi Nouormand (Norman-French Market). The Panel learned that, as drafted, the draft OCR could pose as a barrier to the continuation of Le Marchi Nouormand, as each individual product imported for sale would need its own individual certification, and any unsold items would need to be sent back to the EU. The Panel was advised that in negotiations with the UK there had been concerns raised that Jersey could be used as a ‘back door’ through which a large volume of goods could be imported from the EU without going through a BCP, but that it had been established this would be highly unlikely due to cost and impracticability.¹⁸

¹⁷ [Environment, Housing and Infrastructure Panel Meeting Minutes – 9th November 2021](#)

¹⁸ [Environment, Housing and Infrastructure Panel Meeting Minutes – 9th November 2021](#)

During the public hearing with the Minister for the Environment the Panel was informed that discussions were being undertaken with businesses and that once a conclusion was reached, more formal discussions with businesses would take place to provide the necessary information.

Environmental Health Consultant:

Being a small island we know which businesses regularly import. We are already talking to them, discussing what may have to happen, how it is happening and our officers are going out there and meeting with them. Obviously when we have some sort of conclusion as to what will happen we will have more formal discussions with them and provide the necessary information. But the officers are there to facilitate those imports. Our intention is to continue to make it as easy as possible for those businesses to continue and so far so good. They understand it is not necessarily completely in our gift and they understand that negotiations are ongoing.¹⁹

Subsequent to the briefing, it has been brought to the Panel's attention that there was potential ambiguity over the consultation of the draft OCR. The Panel therefore wrote to the Minister for the Environment to clarify the position and asked whether businesses were aware of the forthcoming changes and what it represents for their trading relationship with the EU. The following response was received:²⁰

Minister for the Environment:

Exporters are already using export health certificates in order to send their goods to the EU. That process is working well, and these businesses accept that the OCR must be in place to allow trade to continue. Officers have endeavoured to implement the OCR as a framework through which the Minister will be able to create import restrictions necessary to maintain SPS health, whilst ensuring that impacts to businesses (those importing from the EU and those exporting to the UK) are minimised.

Submission: Maison de la Normandie et de la Manche

A written submission received by the Panel from Maison de la Normandie et de la Manche²¹ highlights their view regarding the impact of the proposed changes to traders. Concern was raised in relation to the extra cost and paperwork that would be required by traders to provision health certificates for products of animal and plant origin. Furthermore, the requirement for traders to provide a declaration of entry into Jersey with an inventory of the products they are importing. The further requirement to provide two declarations to demonstrate products that had been sold on the Island and those being taken back into France, should any unsold products be returned to France was also raised as concern.

Regarding the requirement for traders to provide a health certificate from Jersey to be able to import their products back into France, Maison de la Normandie et de la Manche explained that Government of Jersey's Environmental Health team was not able to

¹⁹ [Public Hearing with the Minister for the Environment – 7th December 2021](#)

²⁰ [Letter – Minister for the Environment – 17th November 2021](#)

²¹ [Submission – Maison de la Normandie et de la Manche – 13th January 2022](#)

provide the certificate as their traders are not Approved Premises in Jersey. It was noted within the submission that France will not accept the merchandise without this certificate.

Maison de la Normandie et de la Manche further emphasised that the changes would certainly impact the Jersey community through increases on the prices of goods.

Several areas where clarity was being sought by Maison de la Normandie et de la Manche, were included within their submission. Subsequently, the Panel wrote to the Minister for the Environment seeking clarity on these areas. The questions asked by the Panel and the responses provided by the Minister were as follows:²²

1. Will traders need one health certificate per product of animal or plant origin?

For products of animal origin (POAO), traders will need one health certificate per consignment, which is a single group of similar products (e.g., dairy or meat) moving from one approved source to one destination. With the correct certification, for goods of a similar type from multiple approved premises within a third country arriving at a single approved cold store within that third country, then it may be possible to re-certify a consignment of these goods at that approved cold store so that they can be imported to Jersey using a single health certificate.

2. Will there be a list of laboratories / veterinarians that will be published to be sure that controls in France are valid in Jersey?

Article 89 of the EU's Official Control Regulations (OCR) guarantees the reliability of official certificates that are issued within the EU. We would normally accept that the veterinarian's signature and official stamp on incoming certificates were valid without referring to a list. Under the OCR there is a potential to audit the other country's system, but we don't expect that there will be a problem with fraudulent certificates from the EU. Some third countries do send lists to Defra with specimen signatures, but this isn't mandatory (and in practice no-one relies on them).

3. Is a health certificate required for any product meant for human consumption or is it limited to product of animal or plant origin (I'm thinking about drinks for example)?

Health certificates are not required for food and drink products which do not contain products of animal origin.

4. Certificates and attestations must be in English but do products' labels have to be translated in English for traders to import and sell them in Jersey?

The Official Control Regulation does not specify the language(s) that should be used in product labelling. Current labelling regulations applicable in Jersey allow for products being imported for a specific market (e.g., Portuguese or Polish) to be labelled in the language appropriate to that market, whilst products for the general market must be labelled in English.

²² [Letter – Minister for the Environment – 24th January 2022](#)

5. Will it be possible to have health certificates from Jersey to reimport products into France?

In general, it will not be possible to issue health certificates from Jersey to re-import products into France. The official vet in Jersey who would be asked to certify the goods would need to be established at an approved cold store or processing plant and the goods would have to arrive directly to that plant for further processing (which might involve repackaging and relabelling as appropriate). It might be appropriate in limited cases of bulk imports to an approved facility, with repackaging for retail sale and then direct re-export. However, it would not be possible to certify “surplus” goods which have already been on the market for re-export to the standard required meet the EU’s import requirements.

Although Maison de la Normandie et de la Manche noted in their submission that some communication from the Government of Jersey / Environmental Health had been received, they emphasised that clear and exhaustive guidance on the documentation requirements and the costs and checks that will be imposed was not available. It was felt that this guidance would be necessary and that a checklist from Government would make the transition easier.

Recommendation 1: Clear and detailed multilingual guidance in relation to the documentation requirements and the costs and checks that will be imposed should accompany the Regulations given that the guidance is fundamental to their practical implementation. The guidance should be made available to the Panel, States Members and published for traders as soon as practicably possible.

Recommendation 2: A multilingual procedure checklist for traders should be provided by the Government of Jersey to allay traders’ concerns and to simplify the transition in relation to the changes resultant of the Regulations. The checklist should be made available to the Panel, States Members and published for traders as soon as practicably possible.

Conclusion

The Panel is cognisant that the draft OCR is a necessary requirement due to the evolving border regime negotiated between the UK and the EU following Brexit and to enable continued trade. It is clear that the intention behind the draft OCR is to allow free and unfettered trade with the UK to continue with minimal impediments to trade with the EU. However, considering the evidence received, we are very mindful of the potential impact the changes will cause, in particular, for small businesses through additional costs and bureaucracy.

The Minister for the Environment was unable to provide reassurance that support would be made available, despite noting that additional cost and inconvenience would result from the draft OCR. As uncertainties remain regarding Jersey’s position and the potential level of support for traders is undetermined, the Panel raises concern.

Satisfactory guidance is essential to assist traders regarding the changes resultant of the draft OCR. Particularly, as the guidance is fundamental to the practical implementation of the Regulations and will help to allay traders’ concerns.

We hope our comments and recommendations will provide constructive feedback and helpful advice for further consideration by the Minister. We will formally request a response in writing from the Minister as to whether the above recommendations are accepted and will publish the associated correspondence on the States Assembly website.