

Appendix 2: Port Health - Response to Government on the Draft Border Target Operating Model

Environment Department

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Date 17 May 2023

Jo Bradshaw

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By email

Dear Jo,

London Port Health Authority - Border Target Operating Model Consultation Response

After a number of delays the City of London Corporation (the City) was pleased to receive the draft Border Target Operating Model (BTOM) and we support the focus in the Ministerial foreword of 'creating the most effective border in the world, by introducing an improved regime of sanitary, phytosanitary and security controls on imports.' We agree that these controls are essential to maintaining the UK's biosecurity.

The City has an interest in the BTOM consultation as it is the London Port Health Authority (LPHA) for 94 miles of the tidal river Thames, from Teddington Lock to the outer Thames Estuary. The area includes the ports of London Gateway, Tilbury, Tilbury 2, Purfleet, Thamesport and Sheerness, in addition to London City Airport. The split over a wide geographical area, with deep sea and EU trade, with containerised, ro-ro and lo-lo ports, and different trade and volumes means that the LPHA is impacted in a unique and multifaceted way by changes to controls at the border.

The City also operates the Heathrow Animal Reception Centre, the only all species live animal BCP in the UK. It should be noted that whilst this response focusses on the LPHA and the control of food and feed, a separate response from the City in relation to live animals will follow in due course.

With regards to the control of food and feed, the LPHA fully supports the move towards a risk-based approach to border controls for food and feed, including a consistent approach for EU and Rest of World (RoW) imports.

Port Health Authorities (PHAs) have a long history of protecting the UK's borders and we welcome being recognised as experts and as a primary delivery partner, and we trust that this will continue to be the case throughout the lifecycle of the BTOM and the wider Border Strategy 2025.

We also note and support the common theme of simplification and digitisation at the border, which will ensure that we can balance biosecurity with an efficient trading border. The LPHA would also hope that this, in the long term, would facilitate data/information sharing across all parties to further streamline the border; from manufacturers to final destination via controls at the border.

The draft BTOM poses a number of key questions but unfortunately, they are all framed from a trade perspective. Whilst this letter summarises the main feedback, the annex provides full details of our response to the questions posed:

Question 1: What are your views on the new model for Safety and Security controls, their impact on businesses and their implementation?

Question 2: What are your views on the new model for Sanitary and Phytosanitary controls, its impact on biosecurity, animal health and welfare, food safety, businesses, as well as its implementation?

Question 3: What challenges exist for the private sector in meeting the proposed timeline for introducing the new model, and how can specific business models for importing be further supported to prepare?

Question 4: What further detail is needed in order for businesses to prepare for and implement the new Border Target Operating Model?

In summary, whilst the LPHA broadly supports the approach taken in the BTOM, there is a distinct lack of detail that makes it hard for PHAs to plan with any confidence. For example, until recently we had no details of the risk matrix for EU food and feed, and we still don't for RoW trade. The trade volumes through each port, the funding mechanisms, implementation timescales, the risking process are also important when developing a service.

LPHA is also concerned about the potential lack of surveillance of low risk or undeclared/mis-declared imports. This work enables appropriate risk profiling and the identification of new and emerging issues, and vitally it underpins the credibility of the proposed regime and protects legitimate businesses by ensuring that there is no easy access into the UK market.

It is also disappointing that whilst the emphasis in the foreword was clear, that there is an overwhelming emphasis on trade facilitation within the BTOM. Although we understand the importance of a streamlined and efficient border, it should not be at the expense of biosecurity controls. It is also disappointing that there will be no further opportunity to respond to the BTOM once the responses to the consultation have been taken into account.

The BTOM introduces considerable change to the current border control regime, and whilst some changes will need to be actioned quickly with the associated readiness risks, others will be implemented over an extended period with the risks harder to define and understand. This is compounded by the lack of information and detail throughout the BTOM, with many of the provisions still to be confirmed and defined. We would also point out that PHAs/LAs have governance processes that must be adhered to, and it is important that the Elected Members are engaged for key decisions. This will add additional pressure to the timeline for the first known implementation dates.

Whilst we see the BTOM as a significant step forward in approach, there are still many provisions that need to be developed and understood before we have a world beating border. The LPHA has and is committed to working with government on developing these principles.

Yours sincerely

**Port Health & Public Protection
Department of the Environment**

Annex - City of London Corporation (London Port Health Authority) Detailed Response to the Draft Target Operating Model

Lack of detail to allow sufficient planning

Overall, the model for Sanitary and Phytosanitary (SPS) checks outlined in the draft Border Target Operating Model (BTOM) lacks key details.

The risk matrix and throughputs data for European Union (EU) has been released to Port Health Authorities (PHAs), but this has a broad band of uncertainty and is based on a very limited data set.

PHAs have limited data on commodity types, and without the Rest of the World (RoW) information in respect of product risk / country, it is a difficult task to identify the number of documentary, identity and physical checks that PHAs will be expected to undertake, which has implications for staffing.

Many PHAs are unclear on industry expectation, and government may have a role to play in managing the expectations of some port operators and importers in respect of operating hours and days.

The key issue with continued uncertainty is that it costs all stakeholders, if there is not a comprehensive plan for the operation of the border that is fully understood, tested and managed to delivery this will cause uncertainty, unnecessary delay, and delays mean money.

Timescales for Implementation

We note that the government is committed to the implementation of the first date on **31 October 2023**. There is an opportunity to go further than currently planned by making the requirement mandatory and not voluntary for the introduction of health certification on imports of medium risk animal products, plants, plant products, and high-risk food and feed of non-animal origin from the EU. This may seem like upfront cost loading; however, it will have the benefit of preparing businesses in advance of submitting documentation required for the 31 January 2024, and give competent authorities the opportunity to provide feedback to importers. Any concerns around inconsistency of enforcement could be managed through an interim enforcement concordat, like that developed by DAERA in Northern Ireland.

The date of the **31 January 2024** for the introduction of documentary and risk-based identity and physical checks on medium risk animal products, plants, plant products and high-risk food and feed of non-animal origin from the EU, is ambitious; not least because of the need to recruit and train staff.

Funding is key to ensuring that PHAs can resource their departments with the requisite number of staff required to meet the demands of the new checking regime, sufficient to prevent delays at the border. To help mitigate this risk, government should ensure that transition funding of PHAs is continued and extended until such time the income from the new checking regime is received and has reached a stable base.

On a similar theme, the extend or limits of the Trusted Trader schemes should be confirmed, as soon as possible to allow PHAs to understand the impacts of this schemes implementation on staffing numbers, where these schemes are likely to result in diminished checks at the border.

Whilst ensuring funding in place, it is equally important to ensure that legislation and guidance allow flexibility in the way that controls are delivered. PHAs will find it easier to recruit non-professional staff and then train them to perform set roles within the organisation, than to recruit to Environmental Health

Professional and Official Veterinarian roles, both of which are in short supply, but have the vital skills required for dealing with food and feed imports at the border.

Government should set a framework for PHAs to operate within that allows them to deem who is competent to carry out SPS checks, based on evidence of training and experience. A similar model exists in the Food Law Code of Practice and Food Law Practice Guidance that governs the regulation of food hygiene inspection inland.

Government should be willing to phase in or be flexible on the percentage of checks required on goods from the EU and RoW, where it becomes apparent that insufficient staffing is in place to carry out the check ratio required. This approach will allow PHAs to understand their resource requirements and build towards the defined regime; a position that would be hard to achieve from the outset with the current information and so many variables.

31 October 2024 – A reduced dataset for imports and use of the UK Single Trade Window (STW) is welcome however government must ensure that PHAs and businesses are given adequate support and lead times to allow investment in ICT systems that are able to correspond with the STW system. A sustained period of testing and system refinement should be conducted with all parties using the system, to ensure that as far as reasonably practicable, it is fit for purpose when ‘go live’ is confirmed.

Viability of Ports and Funding for Port Health Authorities

Viability of providing facilities for SPS checks, and staffing BCPs are clearly a consideration for Port Operators, and PHAs respectively. The size of a port facility and the nature of the trade through a port of entry is clearly going to impact on volumes, and volumes of trade through a port determines the income upon which SPS checks are supported. There will be many new BCPs across the UK, and additional BCPs added to those already under the jurisdiction of this authority. There will be some instances in which the investment in the facilities to service low volumes are not viable for port operators.

Currently fees for SPS checks are set locally on a full cost recovery basis, with under or over recovery balanced across different financial years. LPHA also holds a small reserve fund, which has been built up over a number of years that protects us from the fluctuations in trade and invest in streaming lining process. This process currently works well for the LPHA.

However, a scenario could arise where checks are at such a low volume that income through the levying of fees would still be insufficient for a PHA/LA to provide staffing to a BCP, unless fees were set at such a high level, that they become unviable for the trade.

Therefore, a very careful examination of volumes, fees and resource requirements for PHAs/LAs is required. Alternative models for fee setting could be explored to ensure consistency of fee application throughout the UK. However, the ramifications would need to be fully understood for each PHA/LA. Government should be aware that any switch to national charging structure could result in over recovery for some PHAs and under recovery for others, with the added need to administer funds across the UK to ensure that all PHAs adequately funded.

LPHA is concerned about the potential lack of surveillance of low risk or undeclared/mis-declared imports, and it is understood that no fees are proposed for this work. The LPHA considers that a low risk food/feed checking regime could be funded through the wider regime as it supports the legitimacy of the whole process and creates a levelling playfield by disrupting non-compliant operators.

Low Risk is not No Risk

Environmental Health Practitioners and Official Veterinarians are adept at understanding and communicating concepts of risk, therefore an explanation of the mechanisms that underpin the entire risk framework is requested, along with the same for the regular updates of products and/or countries that will periodically move between risk categories under the future regime.

Further clarification is required on the assumptions underpinning the entry of low-risk foods, feed and other products into the UK. There is the need to clarify percentages of physical checks for each of the products/risk categories. Additionally, there are some apparent inconsistencies with the published list of products/risks. i.e., some products for animal feed put on the medium risk, while the same product for human consumption is on the low risk. Processed petfood is on the low risk but dog chews in the medium.

There is concern that biosecurity and food supply surveillance will be compromised by a lack of a checking regime. It is currently unclear as to how PHAs will identify foods, feed and/or countries that pose a risk to biosecurity, plant, animal and/or human health without a risk identification mechanism clearly defined, and how intelligence gained at a PHA would be shared with others in a consistent fashion, and then form further intervention, if required. There is genuine concern that the low-risk route will be used to evade SPS checks on medium and higher risk food and feed products unless there is a robust checking regime, intelligence and enforcement regime around it. This is a risk to biosecurity, plant, animal and/or human health.

There needs to be an acceptance of this risk from government, because PHAs see attempts to evade border controls daily. There needs to be surveillance on products entering the UK through ports on the West Coast, otherwise this will be used as a back door for entry of medium and higher risk products into the UK. Evasion tactics will also result in loss of revenue for legitimate checks of medium/high and trade distortion when using non BCP ports.

Inland Authorities

Whilst biosecurity starts at the border, there can be no doubt that Inland Local Authorities form the second line of defence for Imported Food Control, therefore the impact upon them of the changes to the way SPS checks are delivered at the border is a key consideration.

Training will need to be provided to inland authorities about the operation of the new model, key risks, how they are managed, monitored and enforced are all important. Surveillance and enforcement inland are vital to ensure that the information and intelligence gathered by inland authorities is fed back into the system that underpins the border regime.

Funding is also a key consideration, the framework around inland food control is hygiene rather than standards driven, with many local authorities allocating very few FTE officers to the monitoring and

enforcement of imported food, even in some of the larger unitary authorities and boroughs. Without additional funding, no further resource can be given to providing that second line of defence, and the quality of the surveillance inland is much reduced.

It must be recognised that a lack of containment at the border can result in demands for the central competent authority, the Food Standards Agency, and multiple local authorities to deploy resources to deal with a recall and withdrawal of products, sometimes nationally or internationally, to mitigate risk to public health.

Co-Design and Testing

There is concern that PHAs will not see the final BTOM in a draft form. PHAs are naturally concerned that there will be areas of key detail missing from the final document, and there will be no chance to respond, leading to uncertainty for PHAs, port operators, importers and other stakeholders.

The development of the BTOM needs to be a process of refinement between all parties rather than something that is decided by government and imposed on PHAs who will be left to cope with the requirements of the new model.

There needs to be a period of testing for the phasing in of the new model. At present the 31 January 2024 implementation date is a cliff edge between one model and another. As stated above a refined process would be preferable where stakeholders are engaged in a series of 'dry runs' on a test system to allow industry and PHAs to work together to ensure 'end to end' testing of new systems and/or processes. This will give all stakeholders the confidence in the new system and allow any potential issues to be identified before 'go live' to allow for a seamless/frictionless introduction to the new model.

Issues particular to London Port Health Authority

LPHA is unique in its constitution and operation as a PHA. It is constituted as a single riparian authority (not a joint board) but oversees seaports and airports outside of its core local authority area.

LPHA services Sheerness (Swale Borough Council), Thamesport (Medway Council), Purfleet, London Gateway, Tilbury 1 and Tilbury 2 (Thurrock Council). LPHA has no control over the building, expansion or management of BCPs yet LPHA is charged VOA business rate fees on these facilities. Under the new model, reduced checks with full rates for new and existing BCPs will result in much higher fees.

The Ports at Purfleet, Sheerness and Thamesport are not short straight transit points but there are daily calls for roll on, roll off (RoRo) loads that are both accompanied and unaccompanied by drivers therefore adequate prenotification times and information is key to a seamless, frictionless border in these places.

In terms of income derived from SPS checks, it is likely that Ports at Sheerness, Thamesport, Dartford and Dagenham would not be viable to resource, without the income from our other ports.

The TOM specifies that Ridham Docks, Northfleet and Sheerness all have existing BCPs, they do not.

Costs of doing business in London and the Southeast are inherently higher for LPHA than for other PHAs in the UK, this need to be considered in any discussions charging regime.