



The Border Target Operating Model: Draft for Feedback

CIEH submission on the Draft Border Target Operating Model to the Cabinet Office

19th May 2023

About the Chartered Institute of Environmental Health (CIEH)

CIEH is the professional voice for environmental health representing over 7,000 members working in the public, private and third sectors, in 52 countries around the world. It ensures the highest standards of professional competence in its members, in the belief that through environmental health action people's health can be improved.

Environmental health has an important and unique contribution to make to improving public health and reducing health inequalities. CIEH campaigns to ensure that government policy addresses the needs of communities and business in achieving and maintaining improvements to health and health protection.

For more information visit www.cieh.org and follow CIEH on Twitter @The_CIEH.

Any enquiries about this response should be directed to:

Email: policy@cieh.org

Key points:

- The CIEH welcomes the high-level goals of achieving a risk-based approach for SPS goods and the simplification of health certificates and the potential for greater data sharing. However, some of the details underpinning these goals are missing in the Border Target Operating Model.
- The proposed timeline for introducing this new regime is extremely fast, with no time allowed for trial and error and very little in the way of contingency planning.
- A rushed timeline for the implementation of BTOM gives rise to staffing and training challenges for BCPs.
- An amendment to retained EU legislation and a change of policy would enable sufficiently competent environmental health officers at BCPs to take on more responsibility for SPS checks.
- Exiting the EU has meant lost access to vital intelligence about risks presented by imported SPS goods to biosecurity, food safety, public and animal health. The UK now must build its own intelligence networks.
- There is a lack of clarity about the future charging mechanism, specifically whether PHA/LA fees and charges at the BCPs will be set centrally or locally. It is the CIEH view that fees and charges must be set locally, rather than nationally, to ensure that individual BCPs are able to fully recover the cost of the activities they are undertaking.
- CIEH are of the view that rationale behind the assigned risk categorisation of low, medium, and high-risk goods is unclear.
- CIEH are concerned with how the Trusted Trader scheme will operate because of the inherent risks to biosecurity, food safety, and to animal and public health.
- BTOM is silent about the potential impact of the new regime upon inland local authority teams, namely environmental health colleagues working in over 300 local authorities in the UK.
- Concerns regarding 'White van traders' is neither captured nor solved by BTOM.

General comments – Sanitary and Phytosanitary (SPS) controls:

The CIEH welcomes the high-level goals of achieving a **risk-based approach** for SPS goods and the **simplification** of health certificates and the potential for greater data sharing.

However, some of the details underpinning these goals are missing in the Border Target Operating Model (BTOM). The detail, which we trust will follow, will be critical as to whether these and other goals in BTOM can be achieved.

The UK system must ensure that the regulation of food and feed safety, animal health and welfare and plant health within the agri-food chain is fit for purpose and properly implemented. The system is underpinned by legislation and arrangements are in place to govern how it is developed, implemented, and enforced; how the UK assures that regulation is effective and proportionate, how accountability is provided through robust management assurance and audit procedures, and how the work of the various authorities is coordinated to provide the very best outcomes.

CIEH believes the future delivery model must strive for the same approach otherwise it could represent a backward step.

Timescales and consultation:

BTOM is proposing the biggest change to border controls for SPS goods, for decades. Prior to the April 2022 government announcement of the new approach, Border Control Posts (BCPs) were already scaling up, recruiting, training, and planning new facilities in readiness for checking EU goods for the first time, following EU Exit.

It appears that much of this earlier preparation and the costs incurred, will now be wasted, because BTOM is a wholesale shift to an entirely new model.

In April 2023, a year after the government announcement, BTOM was published after considerable delay and only six weeks are given for consultation on it.

There are too many gaps in BTOM to enable meaningful consultation, yet there is to be no sight of a second draft; the next version will be the final version and it will be presented only three weeks after the consultation closes.

The proposed timeline for introducing this new regime is extremely fast, with no time allowed for trial and error and very little in the way of contingency planning.

Such a hasty timeline, with little justification as to why this is the case, and the lack of any opportunity to see a second version of BTOM, sheds doubt on the robustness of what is planned.

Port Health Authorities (PHAs)/Local Authorities (LAs) commonly have good working relationships with the businesses and importers they work with. Furthermore, the modern approach to regulation for the past two decades has been about regulators supporting businesses, understanding their challenges, and helping them to get things right. Yet the consultation process has been heavily skewed towards industry (port operators, importers etc.). Far less time and opportunity has been

given to the PHAs/LAs who will be delivering the new regime on the front line and, in fact, could have helped shape its design for the greater good, with their understanding of the compliance challenges that businesses face.

Staffing and flexibility for the future:

A rushed timeline for the implementation of BTOM gives rise to staffing and training challenges for BCPs. A shortage of Official Veterinarians (OV) is predicted (for import and export work) and industry has spoken of its concerns regarding this, and the costs involved for a number of years. There has been no significant attempt to resolve the issue and the prospect of future supply/demand remaining unaddressed could lead to higher food costs.

An amendment to retained EU legislation (Article 49 of the retained Regulation (EU) 2017/625) and a change of policy would enable sufficiently competent environmental health officers at BCPs to take on more responsibility for SPS checks (i.e., the full range of products of animal origin (POAO) as opposed to the current situation whereby their role is limited to only fish/fishery products). Doing so could provide a more flexible staffing approach, utilising both OV and environmental health professionals for the full range of POAO work and thereby ease the concerns of industry in this respect. In 1978 environmental health officers were first recognised as authorised officers for meat inspection purposes and this definition was further extended by The Authorised Officers (Meat Inspection) Regulations 1987. However, retained Regulation (EU) 2017/625 has had the effect of limiting the application of environmental health skills (despite some questionable interpretations of it which have been allowed to go unchallenged) and this has long been frustrating for the profession, especially as the sector is facing a shortage of this capability.

Many operational environmental health professionals in the field would be competent to take on these additional roles almost immediately, more readily than securing additional OV expertise. A pilot scheme of volunteer BCPs would be useful to test new arrangements in practice.

An example of how the current arrangements lead to unnecessary cost is provided here:

An OV must be paid to be present at a BCP even if a POAO consignment (e.g., milk powder or another type of POAO) is subject to only a documentary check, which the OV won't carry out themselves nor have anything to do with. The consignment would be pre-notified and an authorised offer (not an OV) at the BCP carries out the documentary check. This incurs unnecessary expenditure for the service and ultimately for the importer, with no tangible benefits.

BTOM's goals suggest that checks carried out at the border for some categories are set to change and reduce over time. The proposed Trusted Trader (TT) scheme may remove more and implementation of the UK Single Trade Window, with its automation functionality and link to the import of products, animals, food, and feed system (IPAFFS), still more. The role of the OV and environmental health professionals at the border – and potentially inland – will change. Retaining sufficient flexibility will be key to maintaining services and the high standards expected.

BTOM provides a unique and timely opportunity to make positive changes to the delivery model as outlined above and industry is likely to be supportive of this.

Intelligence and surveillance:

Exiting the EU has meant lost access to vital intelligence about risks presented by imported SPS goods to biosecurity, food safety, public and animal health. The UK now must build its own intelligence. The central competent authorities (Defra, the Food Standards Agency, and Food Standards Scotland) lead the way and will – we assume – continue to share their knowledge with officers at the borders and inland, in the interests of biosecurity, food safety, public and animal health.

Building local intelligence at a border fundamentally comes from the results of mandatory checks that are carried out. Additional intelligence comes from surveillance work at the BCPs, whereby goods are selected for checks based on a huge variety of information sources. Such sources could be the Food Standards Agency's Early Warning System or from national or local headlines in the press or experience of previous poor compliance by a particular country. This surveillance work is funded by the BCP itself and is vital to safeguarding against risks at the border. A BCP's locally set fees and charges allow for surveillance work.

The pre-notification process is key as it enables selection for mandatory checks and for surveillance purposes. IPAFFS IMP is used for pre-notification of EU imports at the current time, which are co-ordinated centrally, but intelligence is not shared with BCPs. A review of this process and the future sharing of data, information and intelligence would be welcome.

Charging arrangements at inland sites:

BTOM refers to a Common User Charger at Inland Sites.

There is a lack of clarity about the future charging mechanism, specifically whether PHA/LA fees and charges at the BCPs will be set centrally or locally. It is the CIEH view that fees and charges must be set locally, rather than nationally, to ensure that individual BCPs are able to fully recover the cost of the activities they are undertaking. The risk of local taxpayers having to propping up the shortfall is not fair or equitable.

Fees should also include the cost of a minimum level of routine surveillance activity, ensuring that intelligence can be collected, and risk profiles produced to help inform future targeting.

Piloting any new arrangement will be vital if the BTOM intends to roll out a new charging model to other BCPs in the future.

Risk categorisation:

The rationale behind the assigned risk categorisation is not clear. PHAs/LAs at the border will build evidence locally which could make a useful contribution to achieving accurate risk categorisation and check rates, but there does not appear to be a process for this. Equally, when categories are to be changed, will PHAs/LAs be cited on this or the rationale for it, shared?

The three-month notice period given for changes to risk categorisation could be difficult for importers to achieve and for staffing at the BCPs, where checks may need to be switched on or off at relatively short notice.

The importer will be responsible for accuracy in describing low, medium, and high-risk products; what if mistakes are made which lead to products escaping the BCP and how can this intelligence be shared for future targeting? Is there an expectation that inland local authorities will be expected to recover rogue consignments or even evaluate goods found inland, to check on appropriate designations of low, medium, and high-risk goods?

The risk categorisation for EU goods has recently been published. It treats the EU as one entity, not 27. Thus, it is a very broad-brush categorisation and one which does not consider the variation in risk factors between countries. This is not a level playing field for business in that it effectively allows the small proportion of countries with higher risks (whether those high risks stem from the foodstuff itself or its country of origin), to benefit from the categorisation afforded to the lower risk countries.

Trusted Trader:

Trusted Trader models are increasingly common and where they have appropriate transparency, accountability, and governance, could be a useful addition to the landscape.

However, BTOM is silent on most of the critical aspects of such a scheme, other than placing a significant emphasis on 'benefits to business,' to be as 'ambitious as possible' and that the design process is 'with industry.'

These proposals present some of the most concerning aspects for the CIEH, because of the inherent risks to biosecurity, food safety, to animal and public health which could occur, if the 'bar' is set too low within any of the criteria.

TT will enable, potentially, businesses to conduct their own checks, in their own premises, providing they meet certain criteria. There is provision for check rates to be reduced, too. Pilots are to commence, to test the theory and practice.

There is no mention of PHAs/LAs being involved in pilots, nor criteria given for the standards within premises which a TT will use for the checks, nor the competency of the individuals within the TT business who will do those checks. How will TTs become authorised? How will pilots be selected, assessed and how will their ongoing approach be vetted?

To be accredited, a TT must 'have no adverse SPS compliance history' – what does this mean? If a pending TT has operational premises inland, perhaps a cold store or a packing business, presumably inland local authorities will again be expected to provide evidence for these criteria. What if there are no records either way, good or bad? Will the presumption be in favour of a TT's application?

A TT must have a 'named person responsible' – what level of qualification, experience and competency must this individual possess? Equivalent to what's held by an OV or an environmental health officer at a BCP, as prescribed by retained EU legislation and government guidance? 'Suitably trained staff' is also not defined. Anything less than what we currently have at the BCPs may be a backward step. Will the TT be required to notify – someone – when names change?

BTOM states that premises used by a TT must be 'bio-secure' but there's no interpretation of this included. The standard of a BCP is explicitly set out in retained EU legislation and guidance, which ensures all facilities meet the standards required and are consistent across all BCPs. Provision is made for frozen, ambient, and chilled goods, for personal protective equipment, for allergen controls, for handwashing etc. Presumably a TT's own premises will be expected to match or exceed the same, otherwise this could be a backward step.

BTOM intends to implement 'government-produced standard operating procedures'; this is hugely out of sync with risk-based regulation in the UK, whereby a business takes responsibility for assessing and managing its own risks. Thus, approaches to ensuring safe food can and do differ between businesses because the origin of food, how it is handled, processed, stored etc. all have an impact on risk and therefore how best to reduce and manage it. By requiring a business to implement 'government-produced standard operating procedures' is a 'one size fits all' approach and is a backward step in regulatory policy terms and is unlikely to work.

Once goods leave a TT's premises, then later problems are identified, will this be another role for inland LAs who will be expected to chase down and deal with foodstuffs?

Inland local authorities:

BTOM is silent about the potential impact of the new regime upon inland local authority teams, namely environmental health colleagues working in over 300 local authorities in the UK.

Inland local authorities already have verification responsibilities for imported food identified inland, especially in retail premises, cold stores, food importers and wholesalers, packers and External Temporary Storage Facilities near air and seaports.

With the likelihood of fewer checks being carried out at the border in future and more of these being done within TT premises inland, problems which arise may have to be investigated and resolved by local authorities.

The process of authorising a TT is unclear, but evidence sought by government to demonstrate previous compliance history, registration, and approval, will also require inland local authority input.

Goods which are released from a BCP or a TT's premises that are later found to be problematic, will inevitably require inland local authorities to track and deal with them.

Providing government with the assurance it seeks to satisfactorily operate TT is likely to come from multiple sources and inland local authorities are likely to be in the forefront of that.

'White van trader' remains a risk and is not captured or solved by BTOM. 'White van trader' purports to be a private individual who often brings meat products over in a vehicle, via roll-on roll off transport, from unknown sources, with no traceability and therefore with multiple risks. Goods are sold to door-to-door to unsuspecting households or to businesses who neither know nor care about food safety and their legal obligations in this respect. The threat to animal health is equally calamitous. Local authorities inland are increasingly having to deal with such incidents, and it is not unforeseeable that this will increase unless additional focus and resource is applied to the stop and search of vehicles at the border and inland.

UK borders will remain risky, regardless of BTOM's ambition and achievements, unless instances of 'white van trader' are also solved.

Therefore, a proper evaluation of the impact of BTOM on the work of inland local authority teams, is required.