EXPLANATORY MEMORANDUM TO

THE MARKING OF RETAIL GOODS REGULATIONS 2025

2025 No. [XXXX]

1. Introduction

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

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Baroness Hayman of Ullock, Parliamentary Under-Secretary of State at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2 John Gordon, Deputy Director for Northern Ireland Strategy and Policy, at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Amy Scaife at the Department for Environment, Food and Rural Affairs Telephone: 07908 849592 or email: ni.trade@defra.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The purpose of this instrument is to provide the Secretary of State for Environment, Food and Rural Affairs (Secretary of State) the power to introduce 'not for EU' labelling for certain retail goods in Great Britain by notice in order to safeguard the supply of retail goods to Northern Ireland.

4.2 It confirms that the Secretary of State can only take the decision to apply a notice where there is evidence that the supply of a retail good is, or is likely to be, seriously adversely affected by relevant business operators withdrawing from the Northern Ireland market. The evidence must demonstrate that this has happened, or will happen, as a result of the 'not for EU' labelling requirements under the Northern Ireland Retail Movement Scheme ('the Scheme').

4.3 If a notice is applied, this means that when retail goods in scope of the notice are placed on the market for sale in Great Britain, they must be individually labelled as 'not for EU'. This instrument empowers local authorities to enforce any notices applied appropriately.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, and Scotland.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, and Scotland.

5. Policy Context

What is being done and why?

5.1 As part of the Windsor Framework, the Regulation (EU) 2023/1231 ('the SPS Regulation') sets out specific arrangements for sanitary and phytosanitary movements. These provide the basis for the Scheme, which significantly simplifies the requirements that were associated with moving goods from Great Britain to Northern Ireland under the original Northern Ireland Protocol. However, to be eligible for the Scheme, various goods must be individually labelled as 'not for EU'. The scope of the goods which must meet these requirements has been introduced in phases, with the final tranche introduced on 1 July 2025.

5.2 Given the size of Northern Ireland's retail market, relative to the rest of the United Kingdom, there is a risk businesses may choose to stop moving goods into Northern Ireland as a result of the additional burden associated with labelling. Therefore, to ensure that goods continue to flow freely, this policy will ensure the Secretary of State can act based on any risk to the supply of those retail goods in scope of 'not for EU' labelling. By mandating 'not for EU' labelling for the much larger Great Britain market, the intention is to incentivise retailers and manufacturers to make the changes necessary for compliance with the smaller GB-NI route. This removes any incentive to delist products in Northern Ireland, rather than label, thus maintaining availability of retail goods in the Northern Ireland market. This in turn reflects the government's commitment to safeguarding Northern Ireland's place within the UK Internal Market, and Union as a whole.

5.3 This instrument empowers the Secretary of State to apply a notice which requires retail goods to be labelled if they are to be placed on the market for sale in Great Britain, where the supply of retail goods to Northern Ireland is, or is likely to be, seriously adversely affected as a result of 'not for EU' labelling requirements for retail goods moved via the scheme. This would only apply to goods in scope of the scheme, which would require individual labelling. The instrument sets out that the Secretary of State will consider various types of quantitative and qualitative data in undertaking a decision to do so. It clarifies that they may also seek advice from the Windsor Framework Independent Monitoring Panel and must consult with relevant Scottish and Welsh Government Ministers before deciding to do so, in accordance with the Concordat agreed between the UK, Scottish and Welsh Governments.

5.4 The instrument confirms that a notice must be published in the Gazette, which specifies the date from which the requirement to label relevant goods will become mandatory. The notice will specify the commodity codes of the retail goods to which the labelling requirements will apply. In addition to the publication of a notice in the Gazette, Defra will update the relevant pages on gov.uk and carry out targeted engagement with businesses to ensure the new requirements are as widely understood as possible.

5.5 The responsibility for labelling retail goods lies with the relevant business operator who first places the retail goods on the market in Great Britain. This means the

operator under whose name or business name the goods are marketed, or in the case of retail goods in the form of plants, the packager. Where a relevant business operator in Great Britain imports goods from a third country, or receives them from Guernsey, Jersey or the Isle of Man, they are responsible for ensuring that the 'not for EU' label is applied before it is placed on the market for the first time in Great Britain.

5.6 There are certain exemptions in addition to those which already exist for retail goods moved through the Scheme. Firstly, small businesses (as defined in the Companies Act 2006) will not need to label retail goods; whether they are responsible for selling, importing, receiving or producing them. Secondly, qualifying Northern Ireland goods will not need to be labelled to be placed on the market in Great Britain, in line with the government's continued commitment to unfettered market access for Northern Ireland businesses. Finally, food for special medical purposes will be exempted, in recognition of the significance of providing long-term clarity on the regulation of these goods for the healthcare sector.

5.7 The Secretary of State and the Scottish and Welsh Ministers will be able to delegate responsibility for enforcement to local authorities within their jurisdiction and empower them to enforce a notice appropriately. This includes a civil penalties regime to be applied in the event an operator who has placed goods on the market for sale in Great Britain has done so in a non-compliant manner. The Fixed Penalties Schedule outlines the specific enforcement processes and civil sanctions. Authorised officers may impose a fixed monetary penalty of £2,500 on a person who has committed an offence under these Regulations. However, as the intention is to provide businesses with opportunities to comply with the notice before a fixed monetary penalty is imposed, this instrument allows for a sufficient period of time to be granted to businesses to make the necessary changes. This period can be extended by agreement, where the business has demonstrated sufficient progress but has been unable to become fully compliant within the time allowed.

5.8 This instrument also sets out certain transitional provisions, namely that goods which have already been made available for sale, or are already being stored at a warehouse, distribution centre or other storage facility at the point a notice is issued, may still be placed on the market for sale. This is intended to eliminate the need to recall products already on the market or in storage, therefore, reducing product wastage and ensuring the continuity of product availability across Great Britain.

5.9 Finally, it clarifies that the Secretary of State must publish an explanatory statement to parliament in the event it is decided to issue a notice. That statement will explain why the decision was made. It also places a duty on the Secretary of State to review periodically the regulations, including any notices issued under the regulations. The first review will take place two years after the regulations come into force.

What was the previous policy, how is this different?

5.10 Prior to the introduction of this policy, the Secretary of State was not able to introduce 'not for EU' labelling in Great Britain. The first labelling requirements for businesses moving certain products to Northern Ireland under the Scheme were introduced in October 2023, and the second phase of labelling requirements commenced in October 2024.

5.11 A much greater range of products will be brought into scope of labelling requirements in July 2025, increasing the potential risk of product delisting. Therefore, the government requires a means of intervention to manage this risk and deter businesses from delisting products by providing a credible threat of enforcement. The timing of

this instrument in line with the expansion of labelling requirements should help to protect consumers in Northern Ireland from this risk.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 8C(1) of the European Union (Withdrawal) Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020) ('the Act'), provides a power "in connection with Ireland/Northern Ireland Protocol in the Withdrawal Agreement". Section 8C(1)(c) of the Act states that "a Minister of the Crown may by regulations make such provision as the Minister considers appropriate", including "for the purposes of dealing with matters arising out of, or related to, the Protocol".

6.2 An explanation of the rationale behind the inclusion of a legislative sub-delegation of power in these regulations can be found at paragraph 11.2.

6.3 The introduction of 'not for EU' labelling in Great Britain deals with matters arising from the Windsor Framework because it is needed to support compliance and delivery of the Scheme, a central part of that Framework.

Why was this approach taken to change the law?

6.4 The law needs to be changed because without regulations to state otherwise, businesses may take business decisions which disadvantage the people of Northern Ireland and the Windsor Framework.

6.5 Defra consulted on introducing this policy on a mandatory basis in early 2024. As is set out in paragraph 7 (Consultation) stakeholders were opposed to a GB-wide labelling policy and have worked with officials to ensure that a more proportionate and targeted approach is adopted, limiting the impact on business while still achieving the policy aim of protecting the supply of retail goods to Northern Ireland. This approach also enables the Secretary of State to take swift action to prevent or reverse product delisting from the Northern Ireland market. It is for these reasons, as is explained further in paragraph 11.2, that we concluded that there was no viable alternative approach to changing the law.

7. Consultation

Summary of consultation outcome and methodology

7.1 The UK Government has undertaken engagement with interested stakeholders, including representatives of traders moving goods between Great Britain and Northern Ireland, in drafting these Regulations. A public consultation on implementation of the original (mandatory) approach to the policy was held between 2 February and 15 March 2024. 192 responses were received, of which 146 were from businesses. Concerns raised included: the expectation of additional costs and complexity, affecting businesses and consumers; the likelihood of a decrease in the range of goods sold to both Great Britain and Northern Ireland; the potential delisting of certain products; and concerns about trade with the EU and other countries becoming more difficult. Feedback from the consultation informed the revised approach.

7.2 Although further public consultation has not been necessary, as the focus of the policy remains unchanged since 2024, the Government has sought further feedback on the issues and drivers surrounding this policy as the SI preparation has developed. The outcome of this engagement has been a move away from a mandatory labelling requirement where all retail goods in scope would require a 'not for EU' label, to a

policy that functions on a contingency basis targeting only those retail goods the supply of which will be seriously adversely affected unless the labelling requirement is imposed.

7.3 This instrument concerns labelling matters which is a devolved matter in the United Kingdom. Therefore, the instrument has been developed alongside the Scottish Government and Welsh Government, and the relevant legislative consent has been sought as per the commitment made by the UK Government during the passage of the European Union (Withdrawal) Act 2018.

8. Applicable Guidance

8.1 The government has published a policy paper alongside these regulations which clarifies the process that the Secretary of State will follow in applying a notice.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

9.2 The Impact Assessment sets out the likely costs associated with meeting the requirements that relevant business operators may face. Over a ten-year period, the assessment concluded that businesses would face between £0 and £53.8m in total one-off labelling costs, including package redesign and the costs associated with setting up new product lines: and between £0 and £279.4m in total ongoing labelling costs, including product line changes and transportation.

9.3 The Impact Assessment also details the key non-monetised benefits associated with the regulations, most significantly the continuation of product choice and availability for consumers based in Northern Ireland.

Impact on businesses, charities and voluntary bodies

9.4 The impact on business, charities or voluntary bodies will depend on the size of the business.

9.5 The legislation does not impact small or micro businesses (employing up to 50 people), as they are exempt from the requirements of regulation.

9.6 The impact on businesses which are not exempt is dependent on a number of factors, including whether the Secretary of State makes a determination to require GB labelling for certain retail goods and whether the goods sold by them are in scope of the requirement. If businesses are required to label relevant goods sold in Great Britain, they will likely face one-off costs associated with meeting the requirements. The extent of these costs will vary by business model.

9.7 There is no significant impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 This legislation, and the power it confers, are predicated on an ongoing monitoring approach, which considers the availability of retail goods and consumer choice in Northern Ireland. The availability of retail goods will also be regularly monitored in other regions within the United Kingdom, to enable cross-comparison with Northern

Ireland and to identify anomalies more effectively. More detail on this can be found in the guidance accompanying the legislation. This includes the extent to which introducing 'Not for EU' labelling, and the labelling remaining in place in Great Britain, is effective in securing the free flow of retail goods within the UK Internal Market. Therefore, this ongoing monitoring will identify whether the legislation and its power is or is not needed.

10.2 A statutory review clause is included in the instrument. The Secretary of State will be required to carry out a review of the Regulations and publish a report of this review after 2 years of the laying date, then every 5 years thereafter.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 If the Secretary of State is satisfied the conditions in regulation 3(2) are met, they will make the decision to issue a notice specifying retail goods that will need to be marked 'not for EU'. It is the notice and not the regulations made under the enabling power in section 8C(1)(c) of the Act that will have the effect of changing the legal requirements imposed upon relevant business operators.

11.2 The policy rationale underpinning the decision to include a legislative sub-delegation of power in these regulations, is that other approaches to implementing the 'not for EU' labelling requirement via additional secondary legislation, once the risk of a seriously adverse effect on supply had been identified, cannot be enacted quickly enough to prevent the delisting of retail goods by businesses. Those instruments would therefore not deliver the government's policy objective which is to prevent products from becoming unavailable in Northern Ireland. The power is only available to the Defra Secretary of State where they are satisfied that there is a risk that supply of a retail good to Northern Ireland will be seriously adversely affected if the labelling requirement is not applied to it.

11.3 As set out in paragraph 6.1 of this Memorandum, the Regulations are made under section 8C(1)(c) of the Act. The explanatory notes accompanying section 21 of the European Union Withdrawal Act 2020 (which insert section 8C into the 2018 Act) make clear that the power is intended to allow Ministers to make such provision as is appropriate to deal with matters arising out of the Northern Ireland Protocol, now referred to as the Windsor Framework. The use of the power in section 8C(1) is subject to significant restrictions, set out in paragraph 8F of schedule 7 to the 2018 Act which provide that where regulations make certain categories of provision, they are subject to the affirmative resolution procedure, allowing Parliament an opportunity to scrutinise any further use of the power.

12. European Convention on Human Rights

12.1 The Parliamentary Under-Secretary of State at the Department for Environment, Food and Rural Affairs, Baroness Hayman of Ullock has made the following statement regarding Human Rights:

"In my view the provisions of The Marking of Retail Goods Regulations 2025 are compatible with the Convention rights".

13. The Relevant European Union Acts

13.1 This instrument is made under section 8C(1)(c) of the European Union (Withdrawal) Act 2018 and therefore relates to the withdrawal of the United Kingdom from the

European Union. This instrument is needed as a result of the Windsor Framework, as agreed between the UK and the EU on 27 February 2023.