EXPLANATORY MEMORANDUM TO

THE MOVEMENT OF GOODS (NORTHERN IRELAND TO GREAT BRITAIN) (ANIMALS, FEED AND FOOD, PLANT HEALTH ETC.) (TRANSITORY PROVISION AND MISCELLANEOUS AMENDMENTS) REGULATIONS 2024

2024 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.

2. Declaration

2.1 Baroness Hayman, 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 Policy, at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Francesca Boylan at the Department for Environment, Food and Rural Affairs Telephone: 07810096592 or email: Francesca.Boylan@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 preserve and sharpen the benefits of unfettered market access for qualifying Northern Ireland goods by applying certain sanitary and phytosanitary ("SPS") controls and processes to non-qualifying goods entering Great Britain ("GB") from Northern Ireland ("NI"), as applied to European Economic Area ("EEA") goods and goods entering GB from Switzerland, the Faroe Islands and Greenland ("relevant countries") under the Transitional Staging Period established in official controls legislation ("the TSP"). Qualifying Northern Ireland goods will continue to benefit from unfettered access to the rest of the UK, so will not be subject to these SPS controls. This instrument will expire when the TSP ends, which is currently set at 1 July 2025.

4.2 This instrument also makes consequential amendments to ensure the correct definition of qualifying Northern Ireland goods is reflected in existing legislation.

Where does the legislation extend to, and apply?

4.3 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.

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

(i) Paragraph 2 of Schedule 2 applies in relation to England only;

(ii) Paragraph 3 and 4 of Schedule 2 apply in relation to Wales only;

(iii) Paragraph 5 of Schedule 2 applies in relation to Scotland only.

5. Policy Context

What is being done and why?

5.1 In order to preserve the benefits of unfettered market access for qualifying Northern Ireland goods, the UK Government made a commitment that non-qualifying goods moving from NI to GB will be subject to the UK's SPS regime. Whereas these controls will not apply for qualifying Northern Ireland goods, which will continue to benefit fully from unfettered access to the rest of the UK market.

5.2 The UK and Devolved Governments have already begun to phase in SPS controls for relevant non-qualifying Northern Ireland goods arriving in GB from the island of Ireland. Since 31 January 2024, non-qualifying Northern Ireland goods arriving into GB from Ireland have been required to provide prenotification and the relevant health and phytosanitary certification. This instrument introduces equivalent SPS requirements for non-qualifying Northern Ireland goods entering GB from NI, ensuring an aligned approach to these SPS controls. These measures ensure that non-qualifying Northern Ireland goods, that should be subject to SPS controls under the Border Target Operating Model, are also subject to these controls when moved into GB from NI, and uphold the Government's responsibilities on biosecurity and food safety. Qualifying Northern Ireland goods will continue to benefit from unfettered market access and will continue to be exempt from these SPS controls.

5.3 Regulation 2 of, and Schedule 1 to, this instrument apply the SPS controls and processes applied to relevant goods under the TSP set out in Annex 6 to Regulation (EU) 2017/625 ("the Official Controls Regulation") and other related legislation to non-qualifying Northern Ireland goods moving into GB from NI.

5.4 The TSP was introduced as part of a phased approach to import controls on goods from EEA, the Faroe Islands, Greenland, and certain European Free Trade Association countries, during which the requirement for certain official documents, and for the performance of official controls in relation to some categories of animals, plants and other goods imported into GB, have been temporarily eased. The Transitional Staging Period has been extended to 1 July 2025 through amendments made by the Official Controls (Extension of Transitional Periods) and Plant Health (Frequency of Checks) (Amendment) Regulations 2024.

5.5 The arrangements therefore apply certain modified provisions of official controls and plant health legislation to these movements until these transitional arrangements come to an end, which will occur once the arrangements for SPS controls set out in the Border Target Operating Model are fully implemented.

5.6 Two of the key requirements this instrument applies is the requirement to pre-notify non-qualifying Northern Ireland goods moving from NI to GB, and the requirements for health certification and phytosanitary certificates that currently apply to relevant third country goods within the scope of the TSP. Since 1 January 2021, high risk plants and plant products have had to provide phytosanitary certification and live animals and germinal products from relevant countries have had to be accompanied by health certificate on arrival. Since 31 January 2024, certain plants, plant products

and other objects from the EU, Liechtenstein and Switzerland have been required to be accompanied by a phytosanitary certificate, by way of amendments to the Plant Health (Amendment etc) (EU Exit) Regulations 2020 (S.I. 2020/1482). Additionally, medium risk products of animal origin and animal by-products have been required to be accompanied by a health certificate since 31 January 2024 (through amendments made by the Official Controls (Extension of Transitional Periods) (Miscellaneous Amendments) Regulations 2024 (S.I. 2024/20).

5.7 Regulation 2(3) of this instrument contains certain modifications of the transitional arrangements applicable to relevant goods, including by specifying that non-qualifying Northern Ireland goods moving into GB from NI may enter GB through the following points of entry;

(a) In relation to relevant goods referred to in Article 47(1)(a) of the Official Controls Regulation or exempted from Article 47(1) of the Official Controls Regulation in accordance with assimilated direct minor legislation or any regulations made under Article 48 of that Regulation, any point of entry;

(b) In relation to relevant goods referred to in Article 47(1)(b) of the Official Controls Regulation; in relation to England, a border control post designated for goods of the category in question or Heysham; in relation to Scotland and Wales, any point of entry;

(c) In relation to relevant goods referred to in Article 47(1)(c) of the Official Controls Regulation, a border control post designated for goods of the category in question or a relevant port;

(d) In relation to relevant goods referred to in Article 47(1)(d) of the Official Controls Regulation, a border control post designated for that category of goods, Cairnryan, Heysham, or any point of entry in Wales.

5.8 Further modifications made by regulation 2(3) include providing that official controls carried out on NI-GB non-qualifying Northern Ireland movements may be carried out at a border control post in Great Britain or any other appropriate place in the customs territory of the UK as specified in Article 44(3) of the Official Controls Regulation, at the frequency rate published by GB Ministers from time to time.

5.9 Regulation 3 of, and Schedule 2 to, this instrument make consequential amendments to various pieces of SPS legislation to ensure that the correct definition of a qualifying Northern Ireland good is reflected in existing legislation and updated in line with legislation made under section 8C(6) of the European Union (Withdrawal) Act 2018 (c. 18), as the definitions in certain existing aspects of legislation are not ambulatory. The definition of "qualifying Northern Ireland goods" which is set out in the Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020, was recently amended in February 2024 by the Windsor Framework (Internal Market and Unfettered Access) Regulations 2024 (S.I. 2024/163). This instrument will ensure the definitions in existing legislation being amended will be updated in line with this recent amendment.

What was the previous policy, how is this different?

5.10 Existing legislation, primarily the Official Controls Regulation and related legislation, applies SPS checks and controls on goods entering GB from a third country. Since this legislation applies to third countries only, non-qualifying Northern Ireland goods entering GB through NI are not currently subject to SPS controls, which this instrument addresses. Qualifying Northern Ireland goods will continue to benefit from unfettered access and will therefore continue to be exempt from these SPS controls.

6. Legislative and Legal Context

How has the law changed?

6.1 The amendments introduced by this instrument are to apply the regime of SPS controls under the Border Target Operating Model to non-qualifying Northern Ireland goods moving into GB directly from NI, as are applied to relevant goods from relevant countries under the TSP.

6.2 Under powers conferred by the European Union (Withdrawal) Act 2018, this retained EU legislation was amended where necessary, in order to address deficiencies in retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

6.3 This instrument is made in exercise of the powers conferred by section 8C(1) of, and paragraph 21(a) of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) (the "2018 Act") to apply, until the end of the Transitional Staging Period, the special transitional import requirements that currently apply to "relevant goods" moving from "relevant third countries" to "relevant goods" other than qualifying Northern Ireland goods, moving from NI to GB.

6.4 The definition of "qualifying Northern Ireland goods" referenced in this instrument is established in regulations made from time to time under section 8C(6) of the 2018 Act, and is currently defined in the Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020, recently amended by the Windsor Framework (UK Internal Market and Unfettered Access) Regulations 2024.

6.5 Annex 6 to the Official Controls Regulation provides for a Transitional Staging Period which temporarily eases the requirement for the performance of official controls in relation to specified categories of plants, animals and other goods imported into GB from relevant third countries (also defined in Annex 6). The current expiration date for the Transitional Staging Period is 31 January 2025, as recently amended by the Official Controls (Extension of Transitional Periods) (Amendment) Regulations 2024.

6.6 The Trade in Animals and Related Products Regulations ("TARP") in England (S.I. 2011/1197), Wales, (S.I. 2011/2379 (W.252)) and Scotland (S.S.I. 2012/177) implement and enforce the Official Controls Regulation, giving effect to law concerning the importation into GB of animals and animal products, including the veterinary checks regime and imports conditions for live animals and animal products imported from countries other than the British Islands. This instrument applies the provisions in TARP, S.I. 2011/1197 and corresponding legislation in Wales and Scotland (S.I. 2011/2379 and S.S.I 2012/177), subject to the transitional arrangements in Schedule 5 to the respective versions of TARP, which are supplemental to the provisions in Annex 6 to the Official Controls Regulation.

6.7 Regulation 52 of the Plant Health (Amendment etc.) (EU Exit) Regulations 2020 disapplies the requirement (established by Articles 72 and 73 of Regulation (EU) 2016/2031) for certain plants, plant products and other objects to be accompanied by a Phytosanitary Certificate when imported into Great Britain from an EU member state, Liechtenstein or Switzerland until the end of the Transitional Staging Period.

6.8 The Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 (S.I. 2019/1517), the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019 (S.S.I. 2019/421) and the Official Controls (Plant Health and Genetically Modified Organisms) (Wales)

Regulations 2020 (S.I. 2020/1134 (W. 259) contain enforcement provisions relevant to the application of official controls in the area of plant health. This instrument applies these regulations, subject to temporary modifications made during the TSP by regulations 4 of the Official Controls and Phytosanitary Conditions (Amendment) Regulations 2021 (S.I. 2021/136) and the Plant Health and Plant Propagating Material (Miscellaneous Amendments) (Scotland) Regulations 2021 (S.S.I. 2021/87), and regulation 3 of the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) Regulations 2021 (S.I. 2021/302 (W. 76)). This is to ensure that relevant enforcement provisions apply to movements captured by this instrument, as modified during the TSP.

6.9 This instrument also makes consequential amendments to ensure that the correct definition of qualifying Northern Ireland goods is reflected in certain existing SPS legislation, as described above. The legislation for which consequential amendments are being made to the definition of qualifying Northern Ireland goods are:

(a) Regulation (EU) 2016/2031 on protective measures against pests of plants

(b) The Trade in Animals and Related Products Regulations 2011

(c) The Trade in Animals and Related Products (Wales) Regulations 2011 (English and Welsh language text)

(d) The Trade in Animals and Related Products (Scotland) Regulations 2012

Why was this approach taken to change the law?

6.10 The transitory approach to the amendments in this instrument made under EU (Withdrawal) Act 2018 powers was considered the best approach to make the necessary changes, while a long-term approach to NI-GB movements is being developed.

7. Consultation

Summary of consultation outcome and methodology

7.1 This instrument concerns devolved matters in the United Kingdom. Therefore, Defra has developed this instrument with the Scottish Government and Welsh Government and obtained the relevant consent as per the commitment made by the UK Government during the passage of the European Union (Withdrawal) Act 2018.

7.2 A period of engagement on the draft Border Target Operating Model, which contained an overview of the changes being introduced in this instrument, ran from 5 April 2023 for 6 weeks. The feedback from this engagement was reflected in the final Border Target Operating Model publication on 29 August 2023.

8. Applicable Guidance

8.1 Guidance on moving non-qualifying Northern Ireland goods into GB from NI will be available shortly after laying this SI.

8.2 Guidance on qualifying Northern Ireland goods can be found on gov.uk[1].

8.3 The Border Target Operating Model, which lists the relevant SPS requirements for non-qualifying Northern Ireland goods, was published on gov.uk[2].

[1] https://www.gov.uk/guidance/moving-food-and-animal-feed-from-northern-ireland-to-great-britain-england-scotland-and-wales

[2] https://www.gov.uk/government/publications/the-border-target-operating-model-august-2023

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the instrument will have effect for a period of less than 12 months due to its expiration in line with the Transitional Staging Period on 1 July 2025, and as such is not subject to review.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies. The purpose of this instrument is to preserve the benefits of unfettered market access for qualifying Northern Ireland goods by applying SPS controls to non-qualifying goods entering GB from NI. Proportionate analysis has been conducted and the estimated annual costs to business from this instrument are below the de minimis threshold.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 No specific monitoring arrangements are needed.

10.2 As this instrument makes provision for time-limited measures, no review clause is required.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

"In my view the provisions of The Movement of Goods (Northern Ireland to Great Britain) (Animals, Feed and Food, Plant Health etc.) (Transitory Provision and Miscellaneous Amendments) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not being made to address a deficiency in retained EU law but relates to the withdrawal of the United Kingdom from the European Union because it is being made under section 8C(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.