EXPLANATORY MEMORANDUM TO

THE WINDSOR FRAMEWORK (ENFORCEMENT ETC.) REGULATIONS 2023

2023 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. Purpose of the instrument

2.1 The purpose of this instrument is to support trade between Great Britain ("GB") and Northern Ireland ("NI") whilst protecting biosecurity on the island of Ireland, following the agreement of the Windsor Framework. The Windsor Framework will see the creation of a new scheme, the Northern Ireland Retail Movement Scheme, which establishes a new sustainable, long-term legal framework for that trade. The new scheme will allow traders moving agri-food goods for the final consumer in NI to benefit from a unique set of arrangements which enables consignments to move on the basis of a single certificate, without routine physical checks, and on the basis of GB public health, marketing and organics standards. This will be available to all such traders, including retailers, wholesalers, caterers and those providing food to public institutions like schools and hospitals.

2.2 The Windsor Framework also establishes a new Northern Ireland Plant Health Label ("NIPHL") scheme which will remove the requirement on plants for planting to be accompanied by a costly phytosanitary certificate. Instead, operators can register and become authorised with the relevant competent authority to issue and attach a NIPHL to goods moving from GB to NI, therefore, reducing the costs and improving the speed at which goods can move. The NIPHL scheme is based on the UK Plant Passport regime which delivers both assurance and traceability of goods and will maintain biosecurity on the island of Ireland.

2.3 Previously banned seed potatoes will once again be available in NI from other parts of the UK while remaining prohibited in Ireland. Instead of full EU certification, all plants and seeds will move in a similar way to the existing UK Plant Passport scheme, in line with traders throughout the UK.

2.4 The amendments contained in this instrument will:

- Ensure that appropriate enforcement powers are in place for retail agri-food goods moved from GB to NI under the Northern Ireland Retail Movement Scheme, which meet GB public health and marketing standards (including those provisions related to fisheries regulations), catch documentation requirements for certain species of fish, and organics standards (referred to as "relevant GB standards") and are placed on the NI market. This will ensure that NI consumers benefit from equivalent protections in respect of such goods, as is the case in GB.
- Ensure that, for certain plants and other objects (vehicles and machinery which have been operated for agricultural or forestry purposes) moving from GB to NI under the NIPHL scheme, sufficient, pragmatic and proportionate

enforcement powers are available in GB and NI (ensuring equivalent protections are in place to those provided for under the existing UK Plant Passport regime).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is as follows. Part 1 extends to the United Kingdom. Part 2 has the same extent as the provisions it amends. Part 3 and the Schedule extend to Northern Ireland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is as follows. Part 1 applies to the United Kingdom. Part 2 has the same application as the provisions it amends. Part 3 and the Schedule apply to Northern Ireland.

5. European Convention on Human Rights

5.1 The Rt Hon Lord Benyon has made the following statement regarding Human Rights:

"In my view the provisions of The Windsor Framework (Enforcement etc.) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

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

6.2 In order to implement the Windsor Framework, the EU has adopted Regulation 2023/1231 of the European Parliament and of the Council ("the SPS Regulation"). This Regulation sets out specific rules relating to the entry into Northern Ireland from other parts of the United Kingdom of certain consignments of retail goods, plants for planting, seed potatoes, machinery and certain vehicles operated for agricultural or forestry purposes, as well as non-commercial movements of certain pet animals into Northern Ireland. The SPS Regulation also disapplies provisions of European Union law in respect of retail agri-food goods moving into NI under the Northern Ireland Retail Movement Scheme. The regulations subject to disapplication are set out under Annex I of the SPS Regulation.

6.3 The SPS regulation disapplies specified EU legislation in respect of consignments of retail goods sent from Great Britain to Northern Ireland, where those consignments fall within the scope of Part 2 of the SPS Regulation. This allows GB standards to be applied to those goods. The Windsor Framework (Retail Movement Scheme: Public

Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023 No. XXX ("the Standards Regulation") will apply relevant GB standards to retail agri-food goods, permitted to move from GB to NI under the Northern Ireland Retail Movement Scheme, to enable these standards to apply when such goods are placed on the NI market. Currently, enforcement regulations in NI refer to EU standards, which are no longer applied to those goods. As such, this instrument is required to modify those enforcement regulations to also apply to the relevant GB standards for goods moving under the Retail Movement Scheme, ensuring NI consumers benefit from equivalent protections in respect of such goods, as apply in GB (see further at paragraph 7.4).

6.4 Regulation (EU) 2016/2031 and Regulation (EU) 2017/625, together, "the EU Regulations" respectively establish protective measures against pests of plants and provide for the conduct of official controls and other official activities to ensure the proper application of rules on plant health and plant protection products (amongst other things).

6.5 The Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 (S.I. 2019/1517) enables competent authorities in England to carry out their obligations under the EU Regulations and provide for a corresponding enforcement regime. Separate but parallel domestic legislation to the 2019 Regulations was introduced in Wales, under The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 (WSI 2020/206), in Scotland, under The Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019 (SSI 2019/421), and in Northern Ireland, under The Plant Health (Official Controls and Miscellaneous Provisions) Regulations (Northern Ireland) 2020 ("the NI Regulations").

7. Policy background

What is being done and why?

7.1 The purpose of this instrument is to provide a legislative basis for the pragmatic and proportionate enforcement of GB public health, marketing and organics standards in NI for goods moved under the Northern Ireland Retail Movement Scheme and for the NIPHL scheme, to ensure that equivalent levels of protection as apply in GB also apply in NI. This is integral to the UK Government's ability to operationalise the new arrangements agreed under the Windsor Framework. In so doing, it will support trade between GB and NI whilst protecting biosecurity on the island of Ireland.

7.2 In order to address instances of misuse and risks of circumvention of the NIPHL scheme, part 2 of this instrument applies equivalent offences as applied under the existing UK Plant Passport regime in relation to the Northern Ireland Plant Health label regime for plants, seed potatoes, and used machinery and vehicles which move from GB to NI. This will allow competent authorities to manage non-compliance proportionately, using the existing domestic plant health enforcement regime. This will have no impact on traders who abide by the terms and conditions and regulations that govern the scheme.

7.3 Part 3 of this instrument ensures that appropriate enforcement powers are also available in NI to protect NI consumers in cases where retail agri-food goods, moving from GB to NI under the Northern Ireland Retail Movement Scheme and placed on the NI market, do not comply with the relevant GB standards.

7.4 Paragraph 6.3 provides an overview of how part 3 will operate. Under the original Protocol, EU regulations governed the relevant standards of all retail goods on the NI market. Under the Windsor Framework, retail agri-food goods moved from GB to NI via the Northern Ireland Retail Movement Scheme will be able to meet relevant GB public health and consumer protection standards. The Standards Regulation applies the GB standards in the retained versions of EU legislation to goods moved under the Scheme. Regulation 9(2) of this instrument applies the NI legislation in the Schedule to goods which enter NI under the Northern Ireland Retail Movement Scheme. NI legislation would normally apply to enforce standards imposed by directly applicable EU law. This EU law is directly applicable in NI under the Northern Ireland Protocol/Windsor Framework. The SPS Regulation will also be applicable in NI, but under Article 1(2) and Annex 1 of that regulation, the standards in directly applicable EU law are disapplied in relation to retail goods under the Scheme. This means that the relevant NI legislation does not apply to retail goods under the Scheme. This SI applies the NI legislation to goods under the Scheme. Regulation 9(3) provides that where the NI legislation is applied it can be read with any modifications necessary to ensure that it applies to enforce the GB standards which apply to goods under the Scheme, rather than the EU law standards which the NI legislation enforces. This will ensure that the relevant enforcement authorities in NI have the power to carry out enforcement activity, including removing non-compliant agri-food goods from sale and taking action against non-compliant businesses, in order to protect public health and consumer interests, and ensure food safety in NI. This ensures NI consumers benefit from equivalent protections in respect of such goods, as apply in GB.

Explanations

What did any law do before the changes to be made by this instrument?

7.5 Previously, the relevant legislation reflected the effect of the original Protocol, that goods moving from GB to NI must meet EU requirements.

Why is it being changed?

7.6 The Windsor Framework establishes a new, sustainable and durable framework for GB-NI trade, including new schemes which allow for a unique set of arrangements for traders moving retail agri-food goods and plants from GB to NI. The changes made by this instrument are required to implement the Framework.

What will it now do?

7.7 The relevant enforcement authorities in NI will have the power to carry out enforcement activity to ensure that retail agri-food goods meet the relevant GB standards, including removing non-compliant agri-food goods from sale and taking action against non-compliant businesses, in order to protect public health and consumer interests, and ensure food safety in NI.

7.8 This instrument will also provide for the enforcement activity for the NIPHL scheme in England, Scotland, Wales and Northern Ireland to apply in line with the application of the UK Plant Passport regime. As the NIPHL scheme aligns with the existing UK Plant Passport regime, several corresponding offences will therefore apply to the NIPHL scheme. The relevant authorities will be able to carry out enforcement activity against businesses not complying with the NIPHL scheme, such as the provision of false or misleading information, to protect plant health.

8. European Union Withdrawal and Future Relationship

8.1 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 in the European Union (Withdrawal) Act 2018.

8.2 This instrument relates to the implementation of the Windsor Framework, as agreed between the UK and the EU on 27 February 2023.

9. Consolidation

9.1 Not applicable to this instrument.

10. Consultation outcome

10.1 There has been no formal consultation on this specific instrument. While there is a legal obligation under retained EU law to consult on changes to food law (which this instrument will amend), there is an exception where the urgency of the matter does not allow it. The exemption applies in these circumstances, given the requirement to meet legal commitments made with the EU.

10.2 The UK Government has considered and reflected engagement with relevant stakeholders, including organisations moving goods between GB and NI, in drafting these Regulations.

10.3 This instrument concerns SPS (sanitary and phytosanitary) matters, which is a devolved matter in the United Kingdom. Therefore, Defra has developed this instrument with the Scottish Government, Welsh Government and Northern Ireland Civil Service and obtained the relevant legislative consent as per the commitment made by the UK Government during the passage of the European Union (Withdrawal) Act 2018. In the absence of a functioning Northern Ireland Executive, this instrument has been noted by the Department of Agriculture, Environment and Rural Affairs and Department of Health in Northern Ireland.

11. Guidance

11.1 Defra has, and continues to, publish guidance for schemes to be delivered as a result of the Windsor Framework. This can be found here: https://www.gov.uk/government/collections/the-windsor-framework-further-detail-and-publications.

12. Impact

12.1 There is no significant impact on charities or voluntary bodies. This SI is a necessary measure to enable the Northern Ireland Retail Movement Scheme and NIPH label scheme, which aim to ease movement of goods between GB and NI, and therefore promote prosperous trade within the UK. There is no significant impact on the public sector. This instrument gives powers to local authorities and therefore the only cost to the public sector is officials' time passing this legislation through.

12.2 A De Minimis Assessment for this instrument has been completed. The annual costs to businesses from this instrument are below the de minimis threshold.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 This instrument applies equally to all businesses, including small businesses.

14. Monitoring & review

14.1 No specific monitoring arrangements are needed.

14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 India Kearsley at the Department for Environment, Food and Rural Affairs, telephone: 07919947665 or email: india.kearsley@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Alexandra McKenzie, Deputy Director for Northern Ireland Policy, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Benyon, Minister of State at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.