EXPLANATORY MEMORANDUM TO

THE WINDSOR FRAMEWORK (FINANCIAL ASSISTANCE) (MARKING OF RETAIL GOODS) REGULATIONS 2023

2023 No. 956

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 provide for financial assistance to be available for those adapting to new labelling requirements, which form part of the new "green lane" arrangements to support trade between Great Britain ("GB") and Northern Ireland ("NI") as part of the Windsor Framework.

2.2 To deliver a new "green lane" for agri-food retail trade, the Windsor Framework will see the creation of a new scheme, the Northern Ireland Retail Movement Scheme ("the Scheme"). This puts in place 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 an entire consignment 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 who have registered onto the scheme.

2.3 Traders who want to move goods under the Scheme will need to meet a set of proportionate labelling requirements, as part of ensuring that they are not moved for sale into the EU. Those labelling requirements will be introduced on a phased basis starting from 1 October 2023.

2.4 This instrument allows a new scheme to be set up to provide financial assistance to support businesses with the costs of adapting to these new requirements in that first phase. The provisions within this instrument ensure that:

- There is a statutory basis for the award of financial assistance to reimburse or subsidise costs of introducing 'Not for EU' markings on packaging and boxes that is required for goods moving via the Scheme, and which are required to display this wording from 1 October 2023.
- There is a statutory basis for the award of financial assistance in any form which may be given by way of a grant, a loan or a guarantee.
- There is a statutory basis for recovering any financial assistance awarded where it has been determined by the Secretary of State or their delegates that the funds have been misused, misappropriated either unintentionally or deliberately, or as a result of any assessment which provides the reasonable grounds to believe the funds awarded have not been used for the purpose they were intended.

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 the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure, no statement is required.

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 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". The Windsor Framework Agreement was reached by the UK and the EU and announced on 27 February 2023.

6.2 This instrument sets up a new scheme to provide financial assistance in respect of the Northern Ireland Retail Movement Scheme, which has been created as part of the Windsor Framework Agreement.

7. Policy background

What is being done and why?

7.1 The purpose of this instrument is to provide financial assistance for labelling, to support trade between GB and NI, following the agreement of the Windsor Framework.

7.2 Agri-food goods intended for sale in retail establishments in NI will be able to move through the new internal Retail Movement Scheme. This includes distribution terminals; supermarket distribution centres; wholesale outlets; points of sale; or that are delivered directly to the final consumer, including by catering operators, at factory canteens, by institutional catering, by restaurants and by other similar food service operators and shops.

7.3 The Scheme creates a unique set of arrangements for traders moving agri-food goods for the final consumer. These arrangements will enable entire consignments to move on the basis of a single certificate, without any routine physical checks and with goods subject to GB public health, marketing and organics standards.

7.4 From 1 October 2023, there will be new, proportionate labelling requirements for moving goods via the Scheme, to make sure that goods are not moved onwards into the EU. This reflects the position advocated by the Government since its July 2021

Command Paper. This includes, in the first phase, the requirement that all meat products and some fresh dairy products are individually labelled. Where products are not individually labelled, there is a requirement to label the box or crate containing the goods moving via the Scheme.

Explanations

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

7.5 This instrument establishes a new scheme.

Why is it being changed?

7.6 This instrument establishes a new scheme.

What will it now do?

7.7 We will introduce a new scheme to provide financial assistance to reimburse businesses for the specific costs incurred in preparation for the labelling requirements that will be required under the Retail Movement Scheme, from the 1 October 2023. Support will include any eligible labelling costs incurred. The level of grant will be limited to the additional costs incurred up to a maximum level as defined in the scheme criteria.

7.8 Any financial assistance awarded that has not been used for the purpose it was intended or where it has been determined that the payment was made because of (i) error, (ii) non-compliance or (iii) fraud will be recovered.

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 S8C of the European Union (Withdrawal) Act 2018, as amended by the European Union (Withdrawal Agreement) Act 2020.

9. Consolidation

9.1 Not applicable to this instrument.

10. Consultation outcome

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

10.2 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 aims to ease movement of agrifood goods between GB and NI, and therefore promote prosperous trade within the UK. Given the voluntary nature of the financial assistance scheme created by this instrument, any impacts will be experienced on this basis.

12.2 There is no significant impact on the public sector given the voluntary nature of the financial assistance scheme created by this instrument.

12.3 An Impact Assessment has not been prepared for this instrument because it introduces an optional grant scheme for traders.

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 Ebrahim Ali at the Department for Environment, Food and Rural Affairs, telephone: 07920501884 or email: ebrahim.ali@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 for Biosecurity, Marine and Rural Affairs, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.