EXPLANATORY MEMORANDUM TO

THE WINDSOR FRAMEWORK (RETAIL MOVEMENT SCHEME) REGULATIONS 2023

2023 No. 896

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) 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 a legislative basis for the Northern Ireland Retail Movement Scheme ("the Scheme"). The establishment of the Scheme was agreed as part of the Windsor Framework agreement between the European Union ("EU") and the UK. It is intended that the Scheme will support trade between Northern Ireland ("NI") and Great Britain ("GB") whilst protecting biosecurity on the island of Ireland, following the agreement of the Windsor Framework.

2.2 The Windsor Framework envisaged the creation of a new scheme, the Northern Ireland Retail Movement Scheme, which establishes a new sustainable, long-term legal framework for trade in agri-food goods between GB and NI. The Scheme will allow traders who move agri-food goods for the final consumer in Northern Ireland 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. The Scheme will be available to be used by all traders in those goods, including retailers, wholesalers, caterers and those providing food to public institutions like schools and hospitals.

2.3 As per standard practices for the movement of goods, this instrument will also ensure that there is a legislative basis for compliance with the terms and conditions of the Scheme. It will allow the relevant authorities:

- to collect and store information on both GB and NI Scheme members and those receiving agri-food goods for onward sale, to allow for the assessment of any risk posed to the biosecurity of the island of Ireland or of the goods entering the EU.
- to carry out risk and intelligence-led checks on traders who are moving or placing agri-food goods on the market in Northern Ireland under the Scheme.
- to continue to carry out documentary and identity checks at much lower and gradually reducing rates on consignments of agri-food goods moving under the Scheme and intended to be placed on the market in NI. These checks will be carried out by the GB or NI competent authorities, or other bodies designated by them to make the checks. This will remove the requirements for routine, set levels of physical checks and ensure that they are done at the discretion of UK authorities in a similar manner to those in place before the UK left the EU.
- to prevent movements of agri-food goods into NI under the Scheme if a risk is identified.

- where an increased risk has been identified, to enter retail premises to carry out checks and to remove goods from sale which pose a risk to the biosecurity of the island of Ireland or of the goods entering the EU, using a comparable approach to current checks relating to food hygiene.

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 territorial extent of this instrument (that is, the jurisdiction(s) of which the instrument forms part of the law) 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, with variation between Great Britain and Northern Ireland.

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(1) of the European Union (Withdrawal) Act 2018 (which was inserted by the European Union (Withdrawal Agreement) Act 2020), allows "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 When the old Protocol was introduced, any goods moving from GB to Northern Ireland became subject to full EU third country Regulations under the EU Official Controls Regulations (2017/625) on 1 January 2021 following the end of the Transition Period.

7. Policy background

What is being done and why?

7.1 When the EU regulations for the movement of goods were implemented following the end of the Transition period on 1 January 2021, the legal framework required that all agri-food goods were fully inspected and certified in line with the EU Official Controls Regulation before moving from GB into NI. These goods required veterinary or plant health officer certification and inspections at the Northern Ireland sanitary and phytosanitary (SPS) facilities. These requirements, if followed in full, would have led to delays in the movement of goods and increased spoilage especially for businesses moving mixed loads of goods (e.g. supermarkets) and may have resulted in the withdrawal of goods and traders from the NI market.

7.2 The Scheme for Temporary Agri-food Movements to Northern Ireland (STAMNI) was introduced on 1 January 2021 to provide a temporary arrangement which simplified the EU requirements for agri-food goods moving directly to retailers in Northern Ireland. However, these were designed as temporary measures, and applied

only to a narrow cohort of traders, and so a permanent sustainable solution was needed.

7.3 Under the Windsor Framework, the Retail Movement Scheme was agreed as a durable solution to this issue, simplifying the movement of retail goods from GB to NI by way of significantly reducing official certification and checking requirements. The Windsor Framework fundamentally amended the text and provisions of the original Northern Ireland Protocol to uphold NI's integral place in the United Kingdom, to address the democratic deficit and to set out a new way forward.

7.4 The Windsor Framework establishes a new, sustainable and durable framework for GB-NI trade. This includes a new Northern Ireland Retail Movement Scheme ("the Scheme") which provides a unique set of arrangements for traders moving agri-food goods for the final consumer. These arrangements would enable 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.

7.5 The Scheme will allow the movement of certain consignments of agri-food goods into Northern Ireland. Domestic legislation is needed to deliver the Scheme. It will be operated so as to address burdens on internal UK trade whilst ensuring that the arrangements do not lead to an increased risk to animal or plant health on the island of Ireland, and does not adversely impact the EU market.

7.6 Agri-food goods intended for sale in retail establishments or delivery to the consumer in Northern Ireland will be able to move through the new internal Northern Ireland Retail Movement Scheme. Eligible establishments include supermarkets, shops, wholesale outlets and points of sale and will cover such goods which are delivered directly to the final consumer, for example by catering operators, at factory canteens, by institutional catering, by restaurants and by other similar food service operators, distribution terminals, including terminals distributing retail goods under controlled temperatures, and supermarket distribution centres.

7.7 Businesses moving and receiving goods will be able to use the Scheme once registered. They will be required to provide details of their business when registering. Once registered, traders will be able to benefit from significantly improved arrangements, including removal of the requirement for costly health certificates needed for individual food products and replacing with a single certificate per consignment.

7.8 Any traders who want to move goods under the Scheme will be required to do so in compliance with the Scheme's terms and conditions. When applying for membership, traders will supply specific information to the competent authority and potentially be subject to checks to confirm that they will move goods in accordance with the scheme and not pose risks to the biosecurity of the island of Ireland. Traders will also be required to provide details of any establishments dispatching or receiving any goods.

Explanations

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

7.9 Previously, the relevant legislation reflected the effect of the original Northern Ireland Protocol i.e. goods moving from GB to NI must have done so in accordance with EU requirements.

Why is it being changed?

7.10 The Windsor Framework establishes a new, sustainable and durable framework for GB-NI trade, including a new scheme which allows for a unique set of arrangements for traders moving agri-food goods into Northern Ireland for the final consumer. These arrangements will enable 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. This instrument is required in order to implement the Framework.

What will it now do?

7.11 The Official Controls Regulations Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 (on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products) lays down rules for official controls on all consignments of goods entering the EU S ingle Market from third countries to ensure that they comply with the rules referred to in Article 1(2) thereof.

7.12 In particular, Article 47 of that Regulation requires certain categories of goods to be subject to official controls at points of entry. In this case, by virtue of the old Northern Ireland Protocol, the rules laid down in Regulation (EU) 2017/625 applied to the entry into Northern Ireland from other parts of the United Kingdom of those consignments.

7.13 The change is to introduce and adapt to the new arrangements for controls and checks applied to retail goods moving under the Scheme, ensuring compliance with the Scheme's terms and conditions.

7.14 It is appropriate to adopt specific rules relating to the entry into Northern Ireland from other parts of the United Kingdom of certain consignments of prepacked retail goods for final consumers for placing on the market and use in Northern Ireland.

7.15 Under the Windsor Framework, goods moved under the Scheme will benefit from a significant reduction in checks, including no routine physical checks, unless there is a risk or intelligence-led rationale. This instrument sets out the relevant parameters for the NI competent authority to undertake any such checks and controls. Goods moving under the Scheme will be subject to the provisions of this instrument.

7.16 The competent authorities in both Great Britain and Northern Ireland will ensure that traders applying to join the Scheme are able to meet its requirements. They will also undertake spot checks to confirm that the terms and conditions of the Scheme are being followed in practice.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made to address a deficiency in retained EU law. It relates to the withdrawal of the United Kingdom from the European Union and is being made under section 8C of 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 27th February 2023.

9. Consolidation

9.1 Not applicable to this instrument.

10. Consultation outcome

10.1 The UK Government has considered and reflected engagement with interested stakeholders, including representatives of traders 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 alongside the Scottish Government, Welsh Government and Northern Ireland Civil Service and sought the relevant legislative consent as per the commitment made by the UK Government during the passage of the European Union (Withdrawal) Act 2018.

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 instrument aims to ease movement of retail goods between GB and NI and therefore facilitate agri-food retail trade for business.

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

12.3 An Impact Assessment for this instrument will be published in due course.

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 powers in 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: 07920 501884 or email: Ebrahim.ali@defra.gov.uk can be contacted with any queries regarding this instrument.

15.2 James Cruddas, Deputy Director, Northern Ireland Mission and Enablers, 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.