

## EXPLANATORY MEMORANDUM TO

### THE WINDSOR FRAMEWORK (RETAIL MOVEMENT SCHEME: PUBLIC HEALTH, MARKETING AND ORGANIC PRODUCT STANDARDS AND MISCELLANEOUS PROVISIONS) REGULATIONS 2023

2023 No. 959

#### 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 the biosecurity of 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 This instrument gives effect to those changes. The amendments contained in this instrument will:
- Extend GB rules for public health, marketing and organics standards to NI so that goods moved from GB to NI via the Northern Ireland Retail Movement Scheme can meet GB standards, following the disapplication of EU rules in these areas.
  - Adjust the GB entry requirements for certain retail agri-food goods (which will be eligible to move as part of the Northern Ireland Retail Movement Scheme) to ensure appropriate controls are applied to reflect their risk profile.
  - Amend the Plant Health Regulation to enable plants for planting, seed potatoes, vehicles and machinery which have been operated for agricultural or forestry purposes to move between NI and GB, using a Northern Ireland Plant Health label. This avoids the need for NI businesses to apply any additional labels should businesses wish to move goods labelled with an NI Plant Health label back into GB.

#### 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 England and Wales, Scotland and Northern Ireland. Part 2 and Schedules 1 to 3 extend to Northern Ireland. Part 3 extends to England and Wales, and Scotland.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is as follows. Part 1 applies to England and Wales, Scotland and Northern Ireland. Part 2 and Schedules 1 to 3 apply to Northern Ireland. Part 3 applies to England and Wales, and Scotland.

#### **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 (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) 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 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 This instrument will address the effect of Annex 1 to Regulation 2023/1231 of the European Parliament and of the Council on specific rules relating to 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”). The SPS Regulation disapplies the legislation listed in Annex 1 from applying under Annex 2 to the original Northern Ireland Protocol (Annex 2 to the Windsor Framework) in respect of retail agri-food goods moving from GB to NI via the Northern Ireland Retail Movement Scheme and placed on the market in NI. This means that the EU legislation listed in Annex 1 will no longer apply to those specific goods or to NI establishments when handling those goods in NI. Instead, this instrument will apply GB legislation, and therefore GB public health and marketing standards (including those provisions related to fisheries regulations), catch documentation requirements for certain species of fish, and organics standards, in place of the EU legislation listed in Annex 1 to retail agri-food goods moving from GB to NI via the Northern Ireland Retail Movement Scheme and placed on the market in NI.
- 6.3 Regulation (EU) 2016/2031 (“the Plant Health Regulation”) and Commission Implementing Regulation (EU) 2019/2072 (“the Plant Health Implementing Regulation” amended as retained EU law, establish protective measures against pests of plants. Regulation (EU) 2017/625 (“the Official Controls Regulation”), provides 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). Following the UK's exit from the EU, The Official Controls (Plant Health) (Frequency of Checks) Regulations 2022 ("SI 2022/739") was introduced to determine the frequency rates of identity and physical checks of consignments of certain plants, plant products and other objects entering GB.

## **7. Policy background**

### *What is being done and why?*

- 7.1 On 27 February 2023, the European Commission and the Government of the United Kingdom agreed the Windsor Framework.
- 7.2 Under the original Northern Ireland Protocol, agri-food goods produced in or moved to NI from GB were subject exclusively to EU standards. Under the Windsor Framework, retail agri-food goods moved to NI under the new Northern Ireland Retail Movement Scheme will be subject to GB, not EU, standards for public health, marketing (including provisions relating to fisheries regulations) and organics. The full list of EU rules that are being disapplied can be found in Annex I to the SPS Regulation. This disappplies over 60 EU instruments, provides resilience against future changes in EU rules, and protects the operation of the UK internal market.
- 7.3 GB standards refer to any standard set by England, Scotland or Wales. As health and food are devolved policy areas, each Devolved Administration can separately set these standards, although in practice there is currently very limited divergence between the standards set by the three nations. The Common Frameworks enable the Devolved Administrations to jointly consider and manage future divergence.
- 7.4 Under the new Northern Ireland Retail Movement Scheme and Northern Ireland Plant Health label scheme, certain retail agri-food goods and plants for planting, seed potatoes, vehicles and machinery which have been operated for agricultural or forestry purposes, will be able to move from GB to NI.

### *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 Annex 1 of the SPS Regulation will disapply provisions of European Union law in respect of retail agri-food goods moving under the Northern Ireland Retail Movement Scheme. This instrument will therefore extend the relevant GB standards to retail agri-food goods when moved from GB to NI under the Northern Ireland Retail Movement Scheme and placed on the NI market.
- 7.7 This instrument also adjusts the GB entry requirements for certain retail agri-food goods, coming from non-EU third countries, to ensure appropriate controls are applied to reflect their risk profile. As such goods are eligible to move under the Scheme, these changes are also included in this Regulation.
- 7.8 This instrument amends the Plant Health Regulation to enable plants for planting, seed potatoes, vehicles and machinery which have been operated for agricultural or forestry purposes, that have moved from GB to NI under a Northern Ireland Plant

Health label, to move from NI back to GB with the same Northern Ireland Plant Health label that has been issued in GB.

*What will it now do?*

- 7.9 Under the Windsor Framework, retail agri-food goods moved from GB to NI under the new Northern Ireland Retail Movement Scheme will be subject to GB, not EU, standards for public health, marketing (including provisions relating to fisheries regulations) and organics. This disappplies over 60 EU instruments, provides resilience against future changes in EU rules, and protects the operation of the UK internal market.
- 7.10 In specific areas of food hygiene legislation, this instrument will also make provision to ensure that food business operators who comply with, and competent authorities who carry out functions under, the EU legislation will be considered to have complied with or carried out the function under the corresponding GB legislation. This is needed to ensure that, for example, food business operators registered as a food business with the relevant competent authority in NI under the relevant EU legislation will not need to re-register under the corresponding GB legislation.
- 7.11 This instrument also adjusts the GB entry requirements for certain retail agri-food goods, coming from non-EU third countries, to ensure appropriate controls are applied to reflect their risk profile.
- 7.12 Finally, the Plant Health Regulation is amended to enable plants for planting, seed potatoes, vehicles and machinery which have been operated for agricultural or forestry purposes to move from NI to GB, using a Northern Ireland Plant Health label.

## **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 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 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 aims to ease movement of retail agri-food goods between GB and NI, and therefore promote prosperous trade within the UK.
- 12.2 There would be a minimal cost on the public sector arising from revised GB entry requirements for the commodities listed in the instrument.
- 12.3 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](mailto: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 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.