

# **EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND THE WINDSOR FRAMEWORK**

**COM(2023) 124 final**

**Proposal for a Regulation of the European Parliament and of the Council on 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.**

Submitted by the Foreign, Commonwealth and Development Office

17 April 2023

## **SUBJECT MATTER**

1. This EM concerns the Proposed Regulation COM(2023) 124, which sets out arrangements agreed under the Windsor Framework for goods subject to sanitary and phytosanitary (SPS) requirements.
2. The old Protocol applied the same burdens on agrifood trade between Cairnryan and Larne as between Holyhead and Dublin. That meant significant burdens and costs for retailers moving agrifood products. It also meant a range of foods - from sausages to seasoned lamb joints - would have been banned completely, with no scope to even transport these goods to Northern Ireland. In addition the movement of seed potatoes was prohibited. Meanwhile plants could only be moved with full third country documentation, necessitating individual phytosanitary certificates at a cost of £150 a time; with the same strict requirements for the movement of agricultural products. Many of these requirements had applied since 2021, leading to trade disruption and diversion. For others, the full extent of burdens was avoided, but only through temporary unilateral grace periods applied by the UK - with the EU taking legal action in response in a number of cases.
3. Under the Windsor Framework, however, the Government has agreed a set of far-reaching, durable changes to ensure that these movements within the United Kingdom can flow smoothly and the integrity of the UK internal market is protected.
4. Under this Framework, new processes for agrifood retail movements, plants for planting, seed potatoes, and pet travel have been agreed. This includes the "green lane" for agrifood retail products; new arrangements for the movement of plants, enabling them to move in line with the broader UK-wide plant passport regime; lifting of the prohibition on the movement of seed potatoes; simplified processes for the movement of pets; and arrangements for the movement of

agricultural vehicles. This proposed Regulation gives effect to those changes (and will be supplemented in due course by further implementing acts).

5. Certain goods, such as those that are destined for the EU or which are not part of the green lane agrifood retail scheme, must use the red lane. They will be subject to EU checks and controls and must continue to meet full EU standards.

## **SCRUTINY HISTORY**

6. Since the UK's departure from the EU, the Government has continued to submit individual EU legislative instruments for scrutiny that apply to Northern Ireland that are in scope of the EU legislation referenced by this new proposal. **MINISTERIAL**

## **RESPONSIBILITY**

7. Responsibility for the Windsor Framework lies with the Foreign Secretary.

## **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

8. In line with existing commitments on intergovernmental engagement, the Minister for Europe chaired a meeting of the Interministerial Group on UK-EU Relations with the Devolved Administrations on Monday 20 March 2023, ahead of the UKEU Joint Committee on 24 March.

## **LEGAL AND PROCEDURAL ISSUES**

9. Legal Base: Article 43(2), Article 114, and Article 168(4), point (b), of the Treaty on the Functioning of the European Union.
10. This regulation is subject to the 13(4) process of the Windsor Framework, and would require an agreement in the Withdrawal Agreement Joint Committee.

## **POLICY IMPLICATIONS**

### ***Green lane for agrifood retail***

11. Part 2 of the legislation provides for the core elements of the new "green lane" for agrifood retail movements to NI. This establishes a new sustainable, long-term legal framework for that trade. The new scheme will allow traders moving agrifood goods for the final consumer in Northern Ireland to benefit from a unique set of arrangements which enables an entire truck to move on the basis of a single certificate, without routine physical checks, and on the basis of UK food and drink safety standards. This will be available to all such traders, including retailers, wholesalers, caterers and those providing food to public institutions like schools and hospitals.

12. Articles 4 and 5 set out the requirements goods must meet in order to qualify for these unique arrangements. This includes products being prepacked and being made available only on the NI market for final consumers. These articles alongside Article 9, also set out requirements around where the goods are moved from or are produced in. As such it is clear that the scheme will not be limited solely to goods from Great Britain or the EU. Goods from across the world can be moved under the scheme, either where they are processed in the UK, where they meet UK public health standards and pose no disease risks, or, where there are potential disease risks for products moved from the rest of the world, where the UK has chosen to take the same approach to protecting against the same pests and diseases as the EU.
13. Where goods meet those requirements, they are then able to move under the single certificate that the Regulation provides for. This certificate affirms that the goods meet the relevant requirements. It is electronically and remotely processed. These articles also confirm that products will not be subject to any routine levels of physical checks - ensuring interventions can be based only on risk and intelligence-led decisions made by UK authorities, to deal with smuggling, criminality, abuse or specific risks to animal, plant, or public health. They also set out, as noted in the Government's Command Paper, that products moving under the scheme will see visual inspections, currently at 100% rate, reduced by 90% from 2023, and by 95% from 2025 when labelling requirements are fully in place.
14. Article 6(6), together with Article 1(2), also confirms that products moved under the scheme will also benefit from the unique arrangement that they will be subject to UK, not EU, standards for public health, marketing, organic, labelling, genetic modification, and drinks such as wines, spirits and mineral waters. The full list of EU rules that are being disapplied can be found in Annex I of this text. This disapplies more than 1,000 pages of EU rules to internal UK movements, providing resilience against future changes in EU rules, and protecting the operation of the UK internal market. Where relevant, these goods will still need to meet EU standards on animal and plant health diseases. But the Government already has, and will always continue to have, protections in place to guard against those same diseases - such as foot and mouth, African Swine Fever and BSE - right across the United Kingdom.
15. Article 6 provides for a set of proportionate labelling requirements as a means of avoiding the products moved under the scheme from being moved into the EU. This reflects the position advocated by the Government since its July 2021 Command Paper. These will mean that a subset of high-risk products such as meat, dairy and other composite products will be marked at a product-level on a phased basis through to 2025. Those marking requirements will first be introduced on meat and fresh dairy from October 2023. From October 2024 these

requirements will be extended to include all other dairy products, such as UHT milk and butter. From July 2025, composite products, fruit, vegetables and fish will also be marked. Further details on the marking requirements and their phasing is set out in Annex IV and V. Articles 7 and 8, in combination with Annex III, provides for several further practical arrangements to ensure the scheme is not abused. This includes monitoring the consignments of retail goods (including through operator seals), and notifying (as under the current grace period) UK authorities of the arrival of the goods, ensuring they are moved between listed establishments that are part of the scheme. As part of these arrangements, the UK competent authorities will provide written guarantees that these products will not increase risks to animal or plant health on the island of Ireland, in line with its longstanding status as a single epidemiological area.

***Plants for planting and used agricultural machinery.***

16. Part 3 of the Regulation concerns the movement of plants for planting (other than seed potatoes).
17. Under Article 10, those movements will need only a single plant health label, rather than the need for a £150 per movement phytosanitary certificate (and its associated requirements). This will enable plants and seeds to move as they do under the existing UK-wide plant passport scheme, in line with traders throughout the UK. This label can be applied by the operators themselves (not requiring any form of competent authority approval or signature beforehand), confirming that the consignments must not move onwards into the EU.
18. To be part of this scheme, professional operators in the United Kingdom will need to be authorised and registered by the competent authorities in the UK. This reflects equivalent requirements under the current UK plant passport regime. Similarly to the agrifood retail green lane, UK competent authorities will provide written guarantees that the scheme will be operated so as to protect the single epidemiological area on the island of Ireland.
19. As part of these arrangements, the requirement for a phytosanitary certificate will also be removed from the movements of used agricultural machinery, where operators can also apply a simple label (which will again be a self-applied label in practice).
20. These arrangements will put Northern Ireland back on a level playing field with growers, gardeners, farmers and others across the UK, with arrangements that reflect the real-world biosecurity risk and protect longstanding flows within the UK internal market.

### ***Seed potatoes***

21. Article 11 removes the prohibition, that has been in place since 2021, on the movement of seed potatoes moving from Great Britain to Northern Ireland. This will ensure that previously banned seed potatoes will once again be available from other parts of the UK (while remaining prohibited in Ireland).
22. As with plants for planting, consignments will have to be dispatched by professional operators authorised by UK competent authorities. They will also be required to have a plant health label, which operators will be authorised to apply themselves, as is the case for plants for planting. Similar written guarantees will also be provided by UK competent authorities.

### ***Non-commercial movement of pets.***

23. Finally, Part 4 of this Regulation sets out the new arrangements for the movement of pets, ensuring that pets will be able to move to Northern Ireland without requiring a rabies vaccine, tapeworm treatment, or an EU Animal Health certificate. Instead, pet owners visiting Northern Ireland from Great Britain but not travelling on to Ireland, will be only required to confirm that the pet is microchipped and will not move into the EU. This will be confirmed by means of a single pet travel document, as set out in Article 12. These will be available online and electronically. They will be issued for the lifetime of the pet. Travellers will also have the option to complete the document in a seamless process built into the booking process for a flight or ferry.
24. Importantly, Article 12(3) confirms that, for Northern Ireland pet owners, there will be no documentation, declarations, checks or health treatments required. These pets will be able to move to and from Great Britain without needing any additional paperwork or process. Northern Ireland pet owners will also continue to be able to move their pet to Ireland and the rest of the EU with an EU pet passport.
25. As with other parts of the proposal, as part of this process UK competent authorities will provide written guarantees that these arrangements do not lead to risks on the island of Ireland. These guarantees make clear that no routine checks will be required, enabling efforts to be focused on real-world welfare, disease or smuggling risks. Article 13 also provides that EU Member States, including Ireland, will also be required to apply effective dissuasive and proportionate sanctions to deter abuse of the scheme, though for North-South movements on the island of Ireland this will operate on a risk and intelligence-led basis.
26. As set out in the Command Paper, the Government will work with travel companies to ensure online guidance reflects these new arrangements, giving travellers confidence to travel once again with their pets.

## **Safeguards**

27. For all of these arrangements, the Regulation puts in place safeguards to deal with any significant issues in their operation. This includes, at Article 14, the potential for suspension of these arrangements. As would be expected, though, this is available only where a very high bar of “systemic failure” is met. And before any potential recourse to that provision, the Regulation sets out requirements for detailed consultative dialogue beforehand, along with a series of detailed procedural steps (with accompanying time periods to follow). This reflects, in line with the broader arrangements of the Windsor Framework, that should there be any future issues, these will be resolved through dialogue.

## **Overall**

28. Taken together, these arrangements establish a durable, sustainable new framework within which goods and movements subject to SPS requirements can move within the UK internal market, while preserving full and unrestricted access for NI businesses to both their most important market in Great Britain, and the whole of the EU Single Market.

## **CONSULTATION**

29. This proposal is the result of bilateral UK and EU discussions. The Government consulted extensively with a broad range of stakeholders in the process of agreeing the Windsor Framework. **FINANCIAL IMPLICATIONS**

30. Implementation of the Windsor Framework will have financial implications for relevant departments and the Northern Ireland Executive, to be considered for approval separately.



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