

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

Proposal for a COUNCIL DECISION establishing the position to be taken on behalf of the European Union in the Joint Committee established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community as regards the adoption of a decision adding two newly adopted Union acts to Annex 2 to the Windsor Framework.

10448/23, COM(23)321

Submitted by the Foreign, Commonwealth and Development Office

26 June 2023

SUBJECT MATTER

1. This EM concerns a proposal that a Joint Decision be adopted by the Withdrawal Agreement Joint Committee to adopt new EU legislation that implements the Windsor Framework (concerning sanitary and phytosanitary (SPS) requirements, and medicines applicable to and in the United Kingdom in respect of Northern Ireland), through the procedure set out in Article 13(4) of the Framework.
2. The proposal made by the European Commission is that the Council should approve the Commission agreeing to the adoption of the Joint Decision at the next UK-EU Withdrawal Agreement Joint Committee meeting, which is due to take place on 3 July (the provisional agenda for which will be set out in a separate Written Ministerial Statement).
3. The EU Regulations in question, which were previously notified to Parliament on 17 April through the 'EM on medicines supply to Northern Ireland' (COM(2023)122), and the 'EM on EU law on sanitary and phytosanitary goods' (COM(2023)124). The Regulations are:
 - 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; and
 - b. Regulation of the European Parliament and of the Council on specific rules relating to medicinal products for human use intended to be placed on the market in Northern Ireland and amending Directive 2001/83/EC.
4. This proposal for a Council Decision is therefore part of the process to put in place the new arrangements agreed as part of the Windsor Framework.

SCRUTINY HISTORY

5. The Regulations were subject to scrutiny as EU documents COM(2023)122 and COM(2023)124. EMs were laid for both proposed Regulations on 17 April 2023. Both the House of Commons European Scrutiny Committee and the House of Lords European Affairs Committee retain those EMs under scrutiny, with letters to the Parliamentary Under Secretary of State (Europe) dated 8 June from the Chair of the Lords Northern Ireland Protocol Sub-committee and 24 May from the Chair of the Commons European Scrutiny Committee, who also reported to the House on both proposals in Report 18, 22/23.

MINISTERIAL RESPONSIBILITY

6. The Foreign Secretary is the UK Co-chair of the Withdrawal Agreement Joint Committee and is responsible for agreeing the Joint Decision.

INTEREST OF THE DEVOLVED GOVERNMENTS (DGs)

7. Information about engagement with the Devolved Governments over the new EU Regulations was set out in the EMs for COM(2023)122 and COM(2023)124.
8. A draft of this EM was shared with the Northern Ireland Executive Office.

LEGAL AND PROCEDURAL ISSUES

9. **Legal Base:** The European Union's legal basis for this decision is Article 218(9) of the Treaty on the Functioning of the European Union (TFEU).
10. **Voting Procedure:** The European Council shall act on the basis of a qualified majority.
11. **Timetable for adoption and implementation:** A decision will be taken by the Council ahead of the Withdrawal Agreement Joint Committee on 3 July.
12. Legal and procedural considerations of the new EU Regulations were set out in the 'EM on medicines supply to Northern Ireland' (COM(2023)122), and the 'EM on EU law on sanitary and phytosanitary goods' (COM(2023)124).
13. Under Article 13(4) of the Windsor Framework, the EU can propose a Joint Committee Decision to add new rules that are in scope of the Framework to the relevant annex of the Framework. In those cases, it is a sovereign decision of the United Kingdom whether to agree (in the Joint Committee) to such a Decision.

POLICY IMPLICATIONS

14. As part of the Windsor Framework, the UK and EU negotiated arrangements to deliver a green lane for SPS requirements, and a set of solutions to safeguard the

supply of medicines to Northern Ireland. The legislation that would be added to the Framework by the proposed Joint Committee Decision implements these arrangements.

15. The full policy implications of this legislation were set out in the EMs for COM(2023)122 and COM(2023)124.
16. Once the Council has approved the Commission agreeing to the adoption of the Joint Decision, it will fall to be approved at the next meeting of the Withdrawal Agreement Joint Committee. This will be done under the Article 13(4) process of the Windsor Framework, which allows newly adopted Union acts falling within the scope of the Framework to be added to the annexed legislation.
17. The EU Regulations which fall to be adopted by the Joint Committee under the 13(4) process were part of the agreement reached with the EU in February over the Windsor Framework. As such, the Government's position is that these Regulations should be added to the Framework. In accordance with paragraph 18(4) of the Windsor Framework (Democratic Scrutiny) Regulations 2023, the Government is not required to seek the support of the Northern Ireland Assembly for this Decision.

CONSULTATION

18. Information about consultation in relation to the Regulations was set out in the EMs for COM(2023)122 and COM(2023)124.

FINANCIAL IMPLICATIONS

19. Information about the financial implications of the Regulations was set out in the EMs for COM(2023)122 and COM(2023)124.

MINISTERIAL NAME AND SIGNATURE

The Rt Hon James Cleverly MP

Secretary of State for Foreign, Commonwealth and Development Affairs

