

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

COM(2024) 57 final + ANNEX

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 amendment of the Decision No 1/2023 of the Joint Committee of 24 March 2023 laying down arrangements relating to the Windsor Framework

Submitted by the Foreign, Commonwealth and Development Office, 25 March 2024

SUBJECT MATTER

1. This EM concerns a proposed Council Decision, which sets out a position to be adopted by the EU at the Withdrawal Agreement Joint Committee. The proposal expands the scope of goods which are classified as 'not at risk' of moving to the EU when brought into the UK, enabling a much broader range of goods to benefit from UK tariffs and Free Trade Agreement preferences. Council agreement to this proposal would enable the EU to approve the measures at the next UK-EU Withdrawal Agreement Joint Committee meeting, which if also agreed by the UK would mean the measures would then have legal effect.
2. This proposal reflects the outcome of extensive discussions between the UK and EU to enable Northern Ireland importers of agri-food goods to benefit from the UK's preferential tariff rate quotas. This has been a priority for the Government and businesses in Northern Ireland since agreeing the Windsor Framework, improving the range of benefits provided under it.

SCRUTINY HISTORY

3. The Government has submitted EMs on previous European Commission proposals for Council Decisions on the position to be taken on behalf of the EU within the Joint Committee established by the Agreement on withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

4. The most relevant of these relate to Council decisions concerning the adoption of the Windsor Framework and the determination of goods not at risk:
 - a. The EMs which cover the two proposed Council Decisions on the proposed positions to be adopted by the EU at the Withdrawal Agreement Joint Committee on the Windsor Framework. The Government submitted an EM on EU documents COM(2023)123 and COM(2023)120 dated 21 March 2023.
 - b. The determination of goods not at risk. EM 13912/20 submitted on 8 January 2021.

MINISTERIAL RESPONSIBILITY

5. Responsibility for the UK's relationship with the EU, including the Withdrawal Agreement, lies with the Foreign Secretary. The Minister of State for the Cabinet Office has responsibility for implementation of the Windsor Framework.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

6. Trade with any place outside the United Kingdom is a reserved matter under the Northern Ireland devolution settlement, but the proposal will benefit businesses in Northern Ireland importing goods from the rest of the world. In line with existing commitments on intergovernmental engagement, matters relating to the Withdrawal Agreement are discussed with the devolved administrations in the Interministerial Group on UK-EU Relations.

LEGAL AND PROCEDURAL ISSUES

7. **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).
8. **Voting procedure:** The European Council shall act on the basis of a qualified majority.
9. **Timetable for adoption and implementation:** A decision will be taken by the Council ahead of the next Withdrawal Agreement Joint Committee, likely in the coming months.

POLICY IMPLICATIONS

10. The Council Decision sets out changes which would be adopted by a decision of the Joint Committee to amend Joint Committee Decision 1/2023.

11. Articles 1(1) and 1(2) creates an additional category of goods in Decision No 1/2023, where any processing in Northern Ireland will be considered to be non-commercial (under Article 6 of that Decision) and which may be declared as 'not at risk' (as provided for under Article 7 of that Decision). This category covers a specified set of goods, set out in the Annex, originating from outside the UK and EU which are imported into the UK by arriving directly into Northern Ireland, and are for sale to, or use by, end consumers in the UK. Traders will be able to claim preferential UK tariff rate quotas on these goods, provided that quantities do not exceed agreed annual limits and that the trader is authorised for the UK Internal Market Scheme. This list includes key commodities, such as lamb from New Zealand and beef from Australia. Going forward, this list will be able to be reviewed at the request of either the UK or EU to ensure that it covers the appropriate range of goods.
12. Traders authorised under the UK Internal Market Scheme will be able to access the relevant UK quota in line with all other imports to the UK. There will also be appropriate safeguards in place to avoid any distortive trade practices, set out in Articles 1(3)-(5) (amending Articles 9-11 of the 2023 Decision in turn), which will be tied to the trader's authorisation under the UK Internal Market Scheme. Within 6 weeks of the start of each quota period, these traders must provide estimates for the quantity of goods they intend to import. They must also indicate categories of customers to whom they will be sold, such as "processors" or "retailers". This will be supported the following year by the actual quantities imported and the categories of customers to whom these products sold. These are in line with the arrangements put in place for the UK Internal Market Scheme in February 2023 to guard against abuse or misuse of the scheme.
13. Finally, Article 1(6) sets out data-sharing arrangements between the UK and EU to enable the assessment of the utilisation levels of each quota and the categories of buyers receiving the goods. And Article 1(7) provides the ability to review the arrangements, at the request of either the UK or the EU. This reflects that the structure could be used to enable further commodities to benefit from these arrangements in future.
14. As amendments to Joint Committee Decision No 1/2023, these changes will be enacted through substantive legal changes to the UK-EU Withdrawal Agreement, providing the same legal status and protections as the rest of the Withdrawal Agreement.

15. The proposed decision would substantially benefit Northern Ireland businesses who import lamb, beef and poultry from outside the UK or EU, including Northern Ireland's significant meat processing sector. These importers would otherwise be unable to access the UK's tariff rate quotas, which had been identified as a priority to address following the Windsor Framework last year. The publication of the proposal was welcomed by Northern Ireland Meat Exports Association and the International Meat Trade association.
16. This proposal will allow NI businesses to access over 70 quotas in the UK's tariff quota regime, covering all active quotas in this agri-food category. Preferential tariff free quotas from UK Free Trade Agreements (FTAs) are included covering more than 4,000 tonnes of lamb and over 3,000 tonnes of beef including from key FTA partners such as Australia and New Zealand. There are no EU equivalent quotas for these products. Over 5,000 tonnes of poultry trade is also included, covering major partners such as Brazil and Thailand. These arrangements will therefore benefit consumers and reflect Northern Ireland's integral place in the UK customs territory and independent trade policy.
17. The annual maximum quantities for these quotas have been designed using data on historic trade flows, taking account the need to provide extra capacity for NI traders to grow and increase imports in the future for this critical sector of the Northern Ireland economy. Food and drink processing contributes around 40% of total manufacturing sales and 30% of total manufacturing employment in Northern Ireland, adding more than £1 billion of value to the Northern Ireland economy annually. This will ensure that Northern Ireland businesses can access the same benefits and growth opportunities as those in the rest of the UK, while maintaining sufficient protection for farmers in the UK.

CONSULTATION

18. This proposal is the result of bilateral UK and EU discussions. The Government consulted extensively with a broad range of business and industry representative organisations, as well as other stakeholders, in the process of reaching this agreement.

FINANCIAL IMPLICATIONS

19. There are no financial implications for the UK arising from this Council Decision.

MINISTERIAL NAME AND SIGNATURE

A handwritten signature in blue ink, appearing to read 'Leo Docherty', with a small dot at the end.

Leo Docherty MP
Minister for Europe
Foreign, Commonwealth and Development Affairs