

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

**Decision of 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 to add the
following EU legislation to the Windsor Framework.**

Unnumbered EM

Regulation (EU) 2023/2411 of the European Parliament and of the Council of 18 October 2023 on the protection of geographical indications for craft and industrial products and amending Regulations (EU) 2017/1001 and (EU) 2019/1753.

Submitted by the Intellectual Property Office, an executive agency of the Department for Science, Innovation and Technology, and the Cabinet Office on 25 April 2025.

SUMMARY

1. The following explanatory memorandum (EM) relates to the UK's intention at the 29 April 2025 UK-EU Withdrawal Agreement Joint Committee to add Regulation (EU) 2023/2411, which establishes a geographical indication (GI) scheme in the EU for craft and industrial products, to the Windsor Framework.

SUBJECT MATTER

2. On 18 October 2023 the EU adopted Regulation (EU) 2023/2411 to establish an EU-wide scheme for the protection of craft and industrial products, also more commonly known as non-agricultural geographical indications (NAGIs). Examples of products which could be within scope of the new Regulation could include handicraft and artisanal products such as Murano Glass and Carrara Marble. The Regulation entered into force on 16 November 2023 and will be fully applicable from 1 December 2025.
3. A geographical indication (GI) is a form of intellectual property right used to indicate that a product has a specific geographical origin and possesses a certain reputation or qualities due to that origin. The EU already has GI schemes for agricultural, food, wine and spirit products that the UK was a member of pre-Brexit. These schemes continue to apply in Northern Ireland. Following Brexit, the UK established GI schemes to continue to protect agricultural, food, wines and spirit products in Great Britain. These are administered by the Department for Environment, Food and Rural Affairs.
4. In the UK, NAGIs are protected via collective and certification marks. These are a well-established and specialised sub-set of the trade mark system, which is administered by the Intellectual Property Office. This is a common way to provide protection, with similar systems operating in the US, Australia, and Canada. There are certain differences between the protection provided

by trade marks and GIs, including whether the right requires renewal to remain in force, and how enforcement is provided. The regimes for agricultural GIs and trade marks operate alongside one another in the UK.

5. Regulation (EU) 2023/2411 introduces a unitary EU NAGI scheme (including registration, verification, and enforcement) and extends the eligibility of EU GI protection to craft and industrial products. This is intended to harmonise NAGI protection across the EU and replace existing dedicated NAGI schemes at a Member State level (where Member States have them).
6. There may be benefits from this Regulation for Northern Ireland businesses such as local crafts producers. It may allow them to more easily participate in the EU scheme and provide another means to protect products that may have importance due to their roots in traditional practices and links to localised economic activity. For instance, Northern Ireland businesses could apply for protection of Irish linen. While the uptake of the scheme for NAGIs originating in the UK is expected to be less than that for agricultural products, the precedent for agricultural products has shown the positive impacts this can have for products such as Irish whiskey and Scottish Salmon.
7. The EU notified the UK in early 2024 that it considered the measure to be within scope of Article 13(4) of the Windsor Framework. As the measure did not amend or replace any of the Acts listed in it the Annexes to the Windsor Framework, it could only be applied through explicit agreement of the UK at the UK-EU Joint Committee. Under Schedule 6B to the Northern Ireland Act 1998 a new EU act may be added to the Windsor Framework where a motion has not been passed by the NI Assembly if “the new EU act would not create a new regulatory border between Great Britain and Northern Ireland”.
8. In March 2024 the Northern Ireland Assembly debated and did not pass an applicability motion on this regulation with cross-community consent. As such, the Government did not agree to add the measures to the Windsor Framework at that time. Following that vote, and in acknowledgment of the concerns raised by MLAs the Government has undertaken detailed further analysis and technical engagement with the European Union and held conversations with stakeholder groups. This work has improved our understanding, for example regarding the co-existence of NAGIs and existing UK trade marks. Our assessment is set out in further detail below. Furthermore, the Government will commit to reviewing its regime in Great Britain. The Government’s assessment following this further engagement and analysis is that it would not create a regulatory border between Great Britain and Northern Ireland. It therefore intends to agree at the UK-EU Withdrawal Agreement Joint Committee of 29 April 2025 to apply this measure in Northern Ireland.
9. The addition of the Regulation to the Windsor Framework means the NAGI regime will apply in Northern Ireland. Protection offered via the UK trade marks system will continue to apply in Northern Ireland. However, the grant of

future UK trade marks which conflict with NAGIs protected in Northern Ireland may be subject to a territorial limitation.

SCRUTINY HISTORY

10. The EU has been assessing the feasibility of introducing a sui generis NAGI scheme for more than a decade. An EM on the European Commission's original proposal was submitted on 27 June 2022 (EU document 8205/22, COM(2022)174). That EM was considered by the House of Lords Windsor Framework Sub-Committee who corresponded with Ministers in the last Parliament.
11. An EM dated 19 February 2024 was submitted on Regulation 2023/2411. Following correspondence with the House of Lords Windsor Framework Sub-Committee the last letter sent to the Sub-Committee by the previous Government in the last Parliament was dated 23 May 2024.
12. Regarding the amendments being made by the legislation:
 - a. 2017/1001: EU document COM(16)702 was a codification proposal and exempt from scrutiny.
 - b. 2019/1753: scrutinised as EU document 11515/18, COM(18)365.
13. Under the terms of Part 4 of Schedule 6B to the Northern Ireland Act 1998, the Government sought an applicability motion on adding Regulation (EU) 2023/2411 to the Windsor Framework. This was debated and voted on in the Northern Ireland Assembly on 19 March 2024. The motion did not receive the cross-community support required to pass.
14. Following this vote, the Government initiated a comprehensive exercise, including engagement between intellectual property experts from the UK and the EU, to understand the potential impact of the regulation if applied and to respond to concerns raised by MLAs. The exercise considered the scope and scale of products which may be eligible for protection under the Regulation, the extent to which those products are likely to move between Great Britain and Northern Ireland, and what that may mean for future trade flows. The outcome of the exercise and the concerns raised during the Assembly debate are discussed in the "Policy Implications" section (paragraphs 24 to 43).
15. Reflecting the outcome of the comprehensive exercise that was conducted, the Minister for the Cabinet Office is satisfied that the Regulation would not create a new regulatory border between Great Britain and Northern Ireland. This test is a component of the safeguards provided for in Schedule 6B of the Northern Ireland Act 1998, to ensure the UK internal market is protected.
16. As such, the Minister for the Cabinet Office intends to agree to add the Regulation to the Windsor Framework at the UK-EU Withdrawal Agreement Joint Committee of 29 April 2025 and is satisfied that this will facilitate

Northern Ireland's unique access to the EU's single market without affecting its place in the UK's internal market.

MINISTERIAL RESPONSIBILITY

17. The Secretary of State for the Department for Science, Innovation and Technology is responsible for intellectual property policy, including trade marks and NAGIs.
18. The Secretary of State for the Department for Environment, Food and Rural Affairs has responsibility for GI policy which relates to wines, spirits and agri-food products.
19. The Minister for the Cabinet Office (Minister for the Constitution and European Union Relations) is the UK Co-chair of the Withdrawal Agreement Joint Committee which oversees UK and EU implementation, application and interpretation of the Withdrawal Agreement.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

20. Intellectual property, including agricultural GIs and NAGIs, is a reserved matter for the UK Government under the devolution settlements.
21. The Northern Ireland Assembly has been involved as per Schedule 6B to the Northern Ireland Act 1998. See "Scrutiny History" for further information (paragraph 13).

LEGAL AND PROCEDURAL ISSUES

22. i. EU Legal Basis

Article 118(1) on intellectual property and Article 207(2) on common commercial policy of the Treaty on the Functioning of the European Union.

ii. Voting Procedure

Qualified Majority Voting.

iii. Timetable for adoption and implementation

The Regulation for this new intellectual property scheme entered into force on 16 November 2023 and will be fully applicable in the EU from 1 December 2025.

23. This measure falls within the scope of Article 13(4) of the Windsor Framework, as a measure which neither amends nor replaces a Union act listed in its Annexes. As such, its application in Northern Ireland is subject to the express agreement of the UK Government at the UK-EU Joint Committee on 29 April 2025.

POLICY IMPLICATIONS

Intent and focus

24. This Regulation harmonises NAGI protection across the EU through the creation of a new unitary EU intellectual property right for craft and industrial products. It is anticipated that the system will be mainly used by micro, small or medium-sized enterprises. The EU foresees relatively low uptake, estimating 300-1000 registrations from businesses or organisations in its Member States in the 10 years after it comes into force. Registrations may also be made from non-EU countries (referred to as “third countries”). For example, it is estimated that 400-800 NAGIs registered in China and India could gain protection in the EU if eligible.
25. The approach taken in Regulation (EU) 2023/2411 (including for eligibility and protection afforded to registered rights) broadly follows that established by the existing GI schemes for agri-food, wines and spirits. The Regulation includes an increased role for the European Union Intellectual Property Office (EUIPO) who are responsible for running the scheme (including for instance managing appeals of decisions made concerning applications).
26. There is a two-phase registration procedure involving a “national phase” (procedures at the Member State level) and a “Union phase” (procedures by the EUIPO). Producers of goods can submit an application, with support from a local, regional or other entity if helpful, in which they provide, inter alia, information regarding the product, production methods (including traditional methods), and specification of the geographical area. In both phases, the relevant competent authority assesses whether the criteria are met and, if so, runs an opposition procedure where parties with a legitimate interest can oppose an application. If there are any admissible oppositions, the relevant competent authority shall invite parties to engage in consultations, such as mediation. Further guidance to support businesses will be provided in due course.
27. Member States designate the relevant competent authority to manage applications and enforcement, although they may opt out from the registration commitments at the national level. Opting out of these registration commitments has no bearing on businesses’ ability to submit NAGI applications or to oppose NAGI applications under the Union phase. In the case of Northern Ireland, the UK will designate the relevant competent authority.
28. Regarding enforcement, the UK will provide necessary measures, procedures and remedies to protect this intellectual property right. The Government will put in place proportionate controls based on risk analysis. NAGI producers in Northern Ireland could also take action for the infringement of their rights through the UK courts. There would also be targeted risk-based enforcement

for products that infringe NAGI rights, including as they enter Northern Ireland, at the discretion of UK authorities.

29. The Regulation includes provisions which underpin the interaction between the new NAGI rights and trade marks. Our analysis suggests that the provisions largely maintain the established status quo regarding the relationship between trade marks and GIs.
30. The Regulation provides for the EU's participation in the Lisbon system, formed by the Lisbon Agreement and the Geneva Act of the Lisbon Agreement (the international framework for the registration and protection of GIs provided by the World Intellectual Property Organization) in relation to NAGIs. This allows businesses (whether based in the EU or in third countries) to claim NAGI protection under the EU scheme through the mechanisms provided by the Lisbon system. NAGIs protected via the Lisbon Agreement will therefore be recognised in Northern Ireland.

Impact of application of the Regulation in the United Kingdom (including Northern Ireland)

Business and trade impacts

31. A 2019 EU study on NAGIs identified a total of 7 potential UK NAGIs (one of which would be in Northern Ireland) that could be registered under the EU scheme. Analysis of UK responses to earlier EU consultations suggests limited understanding of the considerations around further GI protections. Therefore, we expect low uptake of the EU scheme from UK businesses.
32. The Regulation would not lead to a regulatory border between Great Britain and Northern Ireland for several reasons.
33. **The number of NAGI protected goods will be a very small subset of goods** compared with the total number and volumes of Great Britain-Northern Ireland sales, and many expected NAGIs pertain to highly specific and obscure goods that have little relevance in the Northern Ireland market, such as a traditional Finnish belt-knife (Puukko), German dolls (Sonneberger Spielzeug) and Slovenian mud (Piešťanské bahno). We therefore expect the sales of goods using NAGI protected terms to be low as a share of total Great Britain- Northern Ireland sales.
34. **The number of affected businesses is likely low.** The Regulation would only affect businesses that wrongly claim to sell a protected product or evoke the name of a protected product. If the business trades with the EU, they would need to make changes in any case to comply with Regulation (EU) 2023/2411, further reducing the number of affected businesses.

35. **Businesses selling legitimate NAGIs do not have to make any significant changes.** Any businesses wishing to sell goods into NI using a name registered under the NAGI scheme would need to ensure compliance with the registered product specification (i.e., that it comes from the geography it pertains to and meets other relevant specifications). Where these are registered NAGIs originating and manufactured in Northern Ireland, the businesses would undergo a verification procedure for their products. These businesses would then benefit from being able to use the registered name and GI symbol, however, use of the EU NAGI symbol is optional. The Regulation will not place any additional requirements on Great Britain or Northern Ireland businesses selling goods in Northern Ireland that have been sourced from legitimate NAGI producers based in the EU or third countries. Similarly, there would be no additional steps for businesses that also serve the wider EU market.
36. In addition, **if a UK trade mark already exists prior to the NAGI registration, businesses can continue to use the terms currently in use under that trade mark protection in Northern Ireland.** This would limit impact on the use of product names in Northern Ireland in relation to otherwise non-compliant goods where the product names are protected as a trade mark.
37. **Businesses selling, or intending to sell, goods that do not comply with the registered product specification in Northern Ireland can continue to sell their products but would not be able to use a name or imagery of a registered NAGI.** This includes goods sold via e-commerce and goods in storage, transit, imported, and exported; and extends to domain names and online content. This would impact Great Britain businesses not operating in Northern Ireland as all .uk domain names and online content on UK-wide websites will need to comply by virtue of them being accessible in Northern Ireland. As per the above, because of the relatively small number of products concerned and their typically more niche nature, we would expect the impacts to be very limited.
38. If a business needed to alter their packaging or marketing to sell products in Northern Ireland, **a transitional period may be granted to provide time to come into compliance with the Regulation.** Transitional periods of up to 15 years to make the necessary changes to packaging and promotional materials may be granted at the discretion of the EUIPO, subject to meeting certain conditions.
39. The implications of the paragraphs above are best illustrated by an example. Consider, for instance, the case of Murano glass should this be registered under the EU scheme:

- a. **Compliant products:** If a Northern Ireland or a Great Britain business selling into Northern Ireland sources legitimate Murano glass (handcrafted glass from the island Murano in Venice's lagoon), this would be a compliant good and the business can continue to sell it in Northern Ireland under that name without any changes.
 - b. **Non-compliant goods:** If a business, however, produces glass in, say, Belfast or Dorset and tries to sell it in Northern Ireland as 'Murano glass', they would not be able to do so as this product would not be compliant with the registered specification. They would, however, still be able to sell their glass products under a different name.
 - c. **Changes compared to the status quo:** Murano glass is already protected across the UK by a trade mark (although that would not be the case for all potential NAGIs); in addition, consumer protection laws prohibit misleading claims, including about origin. In practice, there should therefore be very few non-compliant "Murano glass" products across the UK, although the protection of NAGIs extends slightly further than trade marks (e.g. includes the evocation of a GI, which could include cases where 'Murano' is used in other non-glass products).
40. As noted further above, while Northern Ireland businesses can currently protect their products in Northern Ireland via the UK trade mark scheme, NAGIs offer an alternative route for businesses to protect their product and product names against infringement. This could also have positive impacts on the price these producers can charge. If businesses opt to protect their product via NAGIs, the protection would be valid in Northern Ireland and the EU. Businesses can in that case also continue to protect their products in Great Britain via a UK trade mark. While the take up of geographical indications for non-agricultural products is likely to be lower than for agricultural products, we have seen that businesses have greatly valued the agricultural GI protections that currently exist for a range of products such as Irish whiskey.

Protection of NAGIs in the UK and interaction with trade marks

41. Producers from across the UK will be able to submit applications under the EU NAGI scheme, in a similar manner to how they apply to existing EU GI schemes and the EU's unitary trade mark system. Applications from Northern Ireland will be processed in the same manner as applications from a Member State. Applications from Great Britain are allowed where "legal proof of protection of the geographical indication in its country of origin" is provided (for example, a UK collective or certification trade mark).
42. The UK operates a trade mark-oriented approach for protection of NAGIs, which offers a similar level of protection to that afforded by the EU NAGI

scheme. The UK will continue to operate this trade mark scheme in relation to NAGIs in Great Britain, meaning businesses with a NAGI will continue to have a route to seek trade mark protection in Great Britain, and NAGIs in Northern Ireland could be protected via the UK trade mark or the EU NAGI regimes. Where products are placed on the market across the UK, they will need to conform with the requirements of the trade mark scheme alongside any relevant GI schemes, including this new NAGI regulation. It is not anticipated that this will create significant practical issues - as demonstrated by coexistence of trade marks with the existing GI scheme for agricultural products. There is no intention at present to introduce a new scheme for NAGIs in Great Britain, as there are no widespread calls amongst stakeholders for change. However the UK Government will review the domestic regime in Great Britain in light of the decision to add Regulation (EU) 2023/2411 to the Windsor Framework. As part of this review, we will carefully consider the interaction of the domestic regime with arrangements in Northern Ireland.

43. The Regulation may impact availability of future UK trade marks, as a trade mark cannot conflict with an earlier NAGI registration.

Enforcement

44. The UK government will appoint a competent authority, which will have responsibility for monitoring and enforcement of the regime. The competent authority will also need to manage any NI applications to the NAGI scheme. Under the scheme all registered NAGIs, not just those originating in Northern Ireland, must be enforced in Northern Ireland. The EU scheme requires monitoring of the use of NAGIs in physical and electronic marketplaces, whether the products are in storage, transit, or being offered for sale at the wholesale or retail level. Monitoring and enforcement activities would be similar to those conducted for the existing agricultural GI scheme, that is via an intelligence-led and risk-based approach, including responding to reports about suspected non-compliance.
45. It is possible the EU could in future directly negotiate trade agreements on mutual recognition of NAGIs with individual trading partners (for example outside the structures of the Lisbon Agreement)—these NAGIs may then be entered into the EU's NAGI register.

CONSULTATION

46. EU consultations started in 2013 and intensified in 2020 and 2021. This has included stakeholder surveys and face-to-face interviews, public consultations (in 2014, 2020 and 2021), workshops and targeted meetings with Member States followed by further written consultation with their intellectual property

offices. In 2022, after the draft NAGI Regulation was published, the Commission sought further feedback from the public.

47. The EU reports that NAGI producers, the European Parliament, the European Committee of the Regions, the European Economic and Social Committee, nine Member States and academia strongly supported the establishment of a specific sui generis GI scheme. Four Member States supported the baseline “do nothing” option of maintaining the status quo and considered that existing trade mark protection is sufficient.
48. Following the vote in the Assembly in March 2024, and in acknowledgment of the concerns raised by MLAs, the UK Government has engaged with the European Commission on the Regulation and held informal discussions with key UK industry stakeholders to gather views on the potential impact of the application of Regulation (EU) 2023/2411 in Northern Ireland. These discussions have informed the content of this EM.

FINANCIAL IMPLICATIONS

49. We expect that the introduction of this scheme in Northern Ireland would have limited cost implications with respect to the administration of the scheme, given low anticipated uptake by Northern Ireland producers and the fact that systems are already in place in the UK in relation to GIs for wines, spirits and agri-food products which could be expanded to cover NAGIs. Should direct costs be borne by Northern Ireland public authorities implementing the scheme, claims for those costs in line with the Government’s Statement of Funding policy commitments would be considered in the normal way. We expect these to be limited due to the mechanisms already in place for enforcement of the EU agri-food schemes in Northern Ireland.

MINISTERIAL NAME AND SIGNATURE



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