

Minister for Agriculture and Connectivity
Ministear an Àiteachais agus Ceangal
Jim Fairlie MSP
Jim Fairlie BPA



T: 0300 244 4000
E: scottish.ministers@gov.scot

Finlay Carson MSP
Convener
Rural Affairs and Islands Committee
Scottish Parliament
EDINBURGH
EH99 1SP
By email rural.committee@parliament.scot
Copied to UKSIs@parliament.scot and
DPLR.Committee@parliament.scot

12 June 2024

Dear Finlay,

**EU EXIT LEGISLATION – PROTOCOL 2 WITH SCOTTISH PARLIAMENT
THE WINDSOR FRAMEWORK (RETAIL MOVEMENT SCHEME: PLANT AND ANIMAL
HEALTH) REGULATIONS 2024 – “DEFRA NID/021”**

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to proposals by the Scottish Ministers to consent to the making of UK negative legislation affecting devolved areas arising from EU Exit.

That protocol, as agreed between the Scottish Government and the Parliament, accompanied the letter from the former Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 4 November 2020 and replaced the previous protocol that was put in place in 2018.

I attach a Type 1 notification which sets out the details of Defra NID/021 which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in this SI. Please note, we are yet to have sight of the final SI and it is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

The instrument is being made as a matter of urgency to ensure full compliance are met under the Windsor Farmework Regulations. The instrument will be subject to negative procedure and on current timelines will be made on 22 July or shortly thereafter. Given these circumstances it is not possible for the 28 days required under the EU Exit Protocol 2 to be met.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

INVESTORS IN PEOPLE™
We invest in people Silver



I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee and Cabinet Secretary for Rural Affairs, Land Reform and Islands.

I look forward to hearing from you by 28 June 2024

Yours sincerely,



JIM FAIRLIE

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

INVESTORS IN PEOPLE[™]
We invest in people Silver



SI NOTIFICATION: SUMMARY

Title: The Windsor Framework (Retail Movement Scheme: Plant and Animal Health) Regulations 2024 – “Defra NID/021”
Proposed laying date at Westminster: 22 July 2024 or shortly thereafter
Date by which Committee is to respond: By 28 June 2024 at the latest
Power(s) under which SI is to be made: This SI is subject to negative procedure and is made in exercise of powers conferred by section 8C(1) and (2) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018
Categorisation under SI Protocol: Type 1
Purpose: Defra NID/021 makes amendments to the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022 (S.I. 2022/739) and other pieces of assimilated law in the area of sanitary and phytosanitary controls for the purpose of implementing the Windsor Framework provision to apply EU law import conditions and official controls requirements to certain products imported into Great Britain from outside of the EU for the purpose of implementing the Windsor Framework.
Other information <ul style="list-style-type: none">- These changes are required to bring more plant and animal commodities within the scope of the NI retail movement scheme (NIRMS) products¹. Checks on these goods arriving from countries outside the EU are required to align with the EU’s approach to sanitary and phytosanitary controls.- The instrument is linked to the ‘Windsor Framework’. This is an agreement between the UK Government and EU which forms part of the NI Protocol. The Framework aims to significantly reduce the number of checks on any goods arriving in Northern Ireland from Great Britain. Five Statutory Instruments related to the implementation of the Windsor Framework were presented to the Rural Affairs and Islands Committee for consideration in 2023². The Committee provided formal consent to proceed with these UK SIs at its meeting on 28 June 2023.- Amendments to the relevant fees legislation to ensure the correct charge for import checks for the commodities included in NID/021 will be introduced through an amendment to the Scottish Statutory Instrument, the Plant Health (Import Inspection Fees) (Amendment) (No. 3) (Scotland) Regulations 2024. The current intention is to proceed with this SSI after the October 2024 recess.
SG Policy contact: Plant Health: Yvonne Hay (Yvonne.Hay@gov.scot) Animal Health: Ian Cox (Ian.cox@gov.scot)

¹ [Northern Ireland Retail Movement Scheme: how the scheme will work - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/northern-ireland-retail-movement-scheme-how-the-scheme-will-work)

² The Windsor Framework (Retail Movement Scheme) Regulations 2023

The Windsor Framework (Plant Health) Regulations 2023

The Windsor Framework (Enforcement etc.) Regulations 2023

The Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023

The Windsor Framework (Financial Assistance) (Marking of Retail Goods) Regulations 2023

NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Windsor Framework (Retail Movement Scheme: Plant and Animal Health) Regulations 2024 – “NID/021”

Is the notification Type 1 or Type 2?

Type 1

A brief overview of the SI

The SI is made in exercise of powers conferred by section 8C (1) and (2) of, and paragraph 21 of schedule 7 of, the European Union (Withdrawal) Act.

The SI is subject to negative procedure and is due to be laid on 22 July 2024 or shortly thereafter.

This instrument makes changes to GB sanitary and phytosanitary measures (SPS) for certain products of animal origin (POAO), plants and products from non-EU (RoW) to allow these goods to be moved to Northern Ireland (NI) from GB to implement the Windsor Framework. This is necessary as Northern Ireland remains subject to EU (SPS) laws. If these goods are not subject to the same checks (and at the same rates) as required for entry to the EU, they will not be able to move to NI.

This SI does not transfer any legislative functions.

NID/021 is relevant to the Scottish Government’s policy of alignment in so far as it concerns the sanitary and phytosanitary checks and controls placed on imported goods and implements the EU-UK Trade and Cooperation Agreement. Since the UK’s withdrawal from the European Union, as a third country the UK is required to operate its own system of sanitary and phytosanitary checks on imported goods. This instrument makes changes within that framework and maintains the high standards of sanitary and phytosanitary control currently in place.

Details of the provisions that Scottish Ministers are being asked to consent to

Summary of the proposals:

The purpose of the instruments is to expand the list of non-EU (i.e. Rest of World (RoW)) animal and plant products eligible for movement from Great Britain to Northern Ireland under the Northern Ireland Retail Movement Scheme (NIRMS).

NID/021 does this by making amendments to:

- Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products (“the Official Controls Regulations” (OCR)),
- Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants (“the Phytosanitary Conditions Regulation” (PCR)) and
- the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022 (S.I. 2022/739)

It will also make provision so that the import conditions and official controls requirements provided for in EU law in Regulation (EU) 2016/429 (“the Animal Health Law”) and Regulation

(EU) 2017/625, and in Commission acts adopted pursuant to those Regulations, apply to poultry products originating in Thailand and China and imported into Great Britain.

Background

The Northern Ireland Protocol sets out the post-EU Exit relationship between Northern Ireland, the EU and Great Britain. Effective from 1 January 2021, it has ensured that zero checks have been placed on goods moving between Northern Ireland and Ireland (and the rest of the EU) by applying the EU's Single Market rules for goods and customs rules to Northern Ireland. As a result, goods entering Northern Ireland from Great Britain require to undergo checks and/or have paperwork to show they comply with the relevant EU regulations.

The Windsor Framework was agreed as an addition to the Northern Ireland Protocol by the UK and EU in February 2023 providing a new set of arrangements to restore the smooth flow of trade within the UK internal market. It acknowledges the principle that the final destination of goods determines the level of risk and allows for goods remaining in Northern Ireland to be treated differently from those moving on to the EU single market.

In October 2023, the Windsor Framework was implemented through a package of five UK Regulations³ as well as the EU Regulation (2023/1231) in relation to sanitary and phytosanitary measures. These regulations facilitate the flow of trade from Great Britain (GB) into Northern Ireland (NI) and with the aim that movements entirely within the UK should be made as seamless as possible.

Why the need for change?

Goods imported into Great Britain from non-EU (RoW) countries can only move to Northern Ireland under NIRMS if non-EU goods are subject to the same checks and controls as apply to the same commodities entering the EU from a non-EU country. NIRMS covers the most commonly traded goods, but does not automatically cover all goods, particularly for goods imported into GB from non-EU countries. Although the list of these goods was agreed by the EU when the scheme was introduced, it was intended that further goods would be added later. To meet NIRMS requirements and working with its participants the additional products have been identified as being particularly important in terms of movements between GB and NI and as such these goods should now be added to the list.

To expand the list for certain non-EU (RoW) goods for plant products, GB import requirements need to be aligned with the EU import requirements. This is because the frequency of rates for goods being imported from non-EU (RoW) have diverged since leaving the EU. The goods in question are low risk (cut flowers and vegetables) from GB biosecurity perspective. In addition, cut flowers need to be added to the special import requirements under Annex VII part A of the PCR for rose plants from certain countries so they too can be moved on to NI from GB. The implementation of the Animal Health Law in the EU, which did not become assimilated law in Great Britain, has also led to some divergence in relation to conditions and controls on animal products.

The non-EU (RoW) products that are being added to NIRMS are as follows:

Product of Animal Origin (POAO): Meat: Poultry meat products originating in China or Thailand (e.g. cooked chicken). Defra NID/021 implements EU import conditions and official control requirements for poultry meat products originating from China and Thailand. This is to

³ S.I. 2023 No.896
S.I. 2023 No.896
S.I. 2023 No.987
S.I. 2023 No.1056
S.I. 2023 No.959

comply with Article 9 of Regulation (EU) 2023/1231 in order for these products to be listed in an implementing act by the Commission, thereby enabling those goods to be imported into GB and moved into NI under the Northern Ireland Retail Movement Scheme.

Plant Products: Basil, leaves of plants (fresh or chilled), Carnations, cut flowers (fresh), Roses, cut flowers (fresh) and Chrysanthemums, cut flowers (fresh)

Does the SI relate to a common framework or other scheme?

Provisional Animal Health and Welfare Framework
Provisional Plant Health Framework
Windsor Framework

Other information:

Amendments to ensure the update for fees related to import checks for non-EU (RoW) goods to reflect the changes in NID/021 will be introduced through an amendment to the Plant Health (Import Inspection Fees) (Scotland) Regulations 2014. The aim is to present this to the Scottish Parliament after the October 2024 recess.

The UK is a member of the World Trade Organization (WTO) and under the SPS agreement is required to notify the WTO of changes to its biosecurity measures at least 60 days in advance (to enable the notification to be circulated to WTO members to comment). However, in cases of emergency, there is no set comment period, and the WTO members can comment at any time following the publication of the notification. The UK Government is proceeding with these measures under WTO emergency procedure. However, Defra as the secretariat for UK National Plant Protection Organisation (NPPO) will be writing to the third country NPPOs to inform them of the new requirements before NID/021 comes into force. Defra's anticipated time frame for this is 13 August 2024.

Summary of stakeholder engagement/consultation

There has been no formal consultation on these specific amendments. NIRMS was devised to support trade between NI and GB whilst protecting biosecurity on the island of Ireland following the agreement of the Windsor Framework. When NIRMS was introduced, it was anticipated that the list of non-EU (RoW) goods would be expanded to ensure these goods comply with EU SPS measures rather than UK SPS measures. The changes are considered necessary based on the dialogue and practices with the scheme participants, also considering the European Commission interests and UK Government's commitment to Northern Ireland and its integral place in the UK. Failure to check these goods at the appropriate rates would mean these goods could not be moved on from GB to NI under NIRMS.

SPS matters are devolved and Scottish Government officials have been engaged with counterparts in Defra in the development of this proposal.

The UK Government will communicate the changes when updating the scheme requirements and provide confirmation to the European Union that legislative changes has been put in place to ensure this scheme can continue.

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation.

This SI takes account of devolved competence.

The Scottish Ministers reasons for consenting to the proposals are as follows:

- The policy intention is aligned across the GB (which consist of England, Scotland, and Wales), and by consenting to the use of devolved provision within NID/021 is consistent with previous plant health provisions and amendments to the Plant Health Regulation.
- Scottish Ministers consider that consenting to NID/021 is the most effective and transparent way to introduce these amendments. It provides clarity and confidence and continues close collaboration across the UK.

Intended laying day (if known) of instruments likely to arise.

Defra anticipate laying this on 22 July or shortly thereafter.

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposals to consent, why not?

Due to the supply chain critical nature of the goods mentioned above; these goods are being moved under the facilitated movement scheme for agri-food goods from GB to NI without meeting all the necessary checks. To resolve the non-compliance issue and improve relationship with the EU, the instrument is being made on an urgency basis which if not corrected may result in these goods not being able to move to NI and resulting in 28 days being breached.

Information about any time dependency associated with the proposal.

N/A

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal.

None.

Any significant financial implications?

No significant financial implications.