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06 June 2025

Dear Convener,

## **THE MARKING OF RETAIL GOODS REGULATIONS 2025 (NID/017)**

### **EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT**

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 secondary legislation affecting devolved areas arising from EU Exit.

That protocol, as agreed between the Scottish Government and the Parliament, accompanied the letter from the then 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 the SI which the UK Government proposes to make, and the reasons why I am content that Scottish devolved matters are to be included in this SI. This SI is subject to the draft affirmative procedure and is due to be laid in draft on 5 June. We will, in accordance with the protocol, advise you when the final SI is made and advise you as to whether the final SI is in keeping with the terms of this notification.

In the notification I explain my reasoning for Scottish devolved matters being included in this SI, despite the unusual circumstances. However, I wanted to take this opportunity to offer my sincere apologies that it has not been possible for the Scottish Government to comply with the normal requirements that members should have at least 28 days to scrutinise the notification before such instruments are laid. I deeply regret this, but the delays have been outside of the control of the Scottish Government. Although we were unable to delay the SI

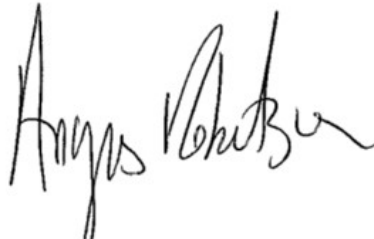
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being laid in draft, the UK Government has confirmed that it will not be debated in Westminster until the Committee has had time to consider our intent to consent to it.

Against that background, could you please respond by 12 June 2025.

I look forward to hearing from you.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

A handwritten signature in black ink, appearing to read 'Angus Robertson', with a stylized, cursive script.

**Angus Robertson**

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## **NOTIFICATION TO THE SCOTTISH PARLIAMENT**

### **Name of the SI(s) (if known) or a title describing the policy area**

The Marking of Retail Goods Regulations 2025 (NID/017)

### **Is the notification Type 1 or Type 2**

Type 1

### **A brief overview of the SI (including reserved provision)**

The Marking of Retail Goods Regulations 2025 (NID/017).

The SI is made in exercise of powers conferred by section 8C(1)(c) of the European Union (Withdrawal) Act 2018.

This SI is subject to the draft affirmative procedure and is due to be laid in draft on 5 June 2025, and to come into force on 1 July 2025.

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU because it relates to the supply of goods from Great Britain to Northern Ireland and labelling requirements post-Brexit; there is no equivalent EU law or policy with which to align.

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

#### **Summary of the proposals**

#### **Background**

The UK Government's stated reason for this SI is to help safeguard the supply of agri-food goods into Northern Ireland, and to ensure that the availability of these products in Northern Ireland is not reduced due to the labelling requirements of Windsor Framework Northern Ireland Retail Movement Scheme (NIRMS).

The proposal for this SI was originally put forward in the Safeguarding the Union command paper which was published by the previous UK Government on 31 January 2024. This command paper included a commitment for the UK Government to bring forward legislation that would extend the Windsor Framework NIRMS agri-food labelling requirements so that they would be mandatory for all relevant products placed on the market in Scotland, England and Wales, in order to remove any incentive for businesses to avoid placing goods on the NI market (i.e. delisting). In response to this, several food and drink industry stakeholders publicly stated that these proposals would lead to significant implementation costs for businesses, negative impacts on exports and investment, less choice and higher prices for consumers.

Following a public consultation on the implementation of these proposals in Spring 2024, which received predominantly negative feedback from stakeholders (further detail is given in the stakeholder engagement/consultation section of this notification), on 30 September 2024 the current UK government announced that it would take a different approach, and would develop legislation that could be used in a targeted way and on a contingency basis, if there was evidence of certain products being delisted in Northern Ireland as a result of the NIRMS requirements.

They have committed to establishing a market monitoring system, which will provide robust evidence on the availability of goods in Northern Ireland. They have also indicated that other drivers, such as consumer choice or global changes in supply, should not, in and of themselves, trigger activation of the SI.

They have also committed to engaging with the industry before activation of the SI is considered, to identify and troubleshoot issues as appropriate (further detail is given in the stakeholder engagement/consultation section of this notification).

## **Summary of the provisions in the SI**

### *Application of a notice*

The Regulations will confer a power on the Defra Secretary of State to issue a notice that will require operators to individually mark the products specified in the notice as 'not for EU' before those products are placed on the market for sale to consumers in Great Britain.

This notice will only be issued in the event that the Defra Secretary of State determines, following consultation with the Scottish and Welsh governments, that the supply of relevant products to Northern Ireland is, or is likely to be, seriously adversely affected as a result of labelling requirements associated with NIRMS. The Defra Secretary of State will be required to publish an explanatory statement which sets out why their decision to intervene was justified.

This notice will be published in the London (England and Wales) and Edinburgh (Scotland) Gazette in order to make businesses aware of the requirement. It will set out the commodities in scope, by commodity code, along with a description of the commodity and the date from which this will become mandatory.

### *Scope and exemptions*

The products that will be in scope of these Regulations are those that are in scope of the product-level labelling requirements associated with NIRMS. There is no box or shelf-level labelling requirement under these Regulations. Many shelf-stable goods (e.g. cakes, pasta, confectionery) will not be in scope, nor will goods sold loose or by weight (e.g. vegetables) or individual goods for direct consumption on the spot (e.g. in a cafe).

As a result of the consultation and engagement that has taken place during the development of these Regulations, certain exemptions have been provided for:

- **Small Businesses**, as defined in the Companies Act 2006. This means that neither the small business responsible for selling the goods in Great Britain, nor the small business responsible for producing the goods (even if they are sold onward by a business who does not meet the definition of a small business) will be required by this legislation to label their goods.
- **Qualifying Northern Ireland goods**, per the definition in The Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020.
- **Food for special medical purposes**, where they are not already explicitly carved out in the arrangements for NIRMS. This includes any product which is specifically formulated to support the dietary or medical needs of an individual who cannot eat normal foodstuffs.

### *Guidance and Review*

The Regulations will require the Defra Secretary of State to publish accompanying guidance, which in particular sets out the process which they must follow when making a decision to issue a notice as outlined above.

The Defra Secretary of State will also be required to carry out a statutory review of the Regulations after two years and subsequently every five years.

### *Enforcement*

Once a notice has come into force, it will be the responsibility of the relevant enforcement authority (e.g. Local Authorities) to enforce its requirements. The Regulations provide for these authorities to carry out inspections and issue improvement notices and civil, financial penalties as necessary where there is non-compliance.

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

As noted in the sections above, this SI is linked to the Windsor Framework. It is not a direct requirement of the Windsor Framework, but the UK Government is putting it in place as part of their proposals to deter businesses from delisting their products in Northern Ireland as a result of the labelling requirements being phased in under NIRMS.

This SI is not linked to a particular Common Framework.

### **Summary of stakeholder engagement/consultation**

The previous UK Government ran a public consultation on GB-wide “Not for EU” labelling from 2 February 2024 to 15 March 2024. The proposal put forward in that consultation was that a mandatory “Not for EU” labelling requirement would be

applicable to all relevant agri-food products (i.e. products that would be covered by the Northern Ireland Retail Movement Scheme (NIRMS)) that were placed on the market in Scotland, Wales and England.

They received ~200 responses to this consultation, and shared a summary of these responses with the devolved governments (which indicated that most of the feedback about the policy had been negative).

As a result, on 30 September 2024 the current UK Government announced that it would not be taking forward that mandatory labelling requirement, but would instead develop legislation that could be used in a targeted way and on a contingency basis, if there was evidence of certain products being taken off the shelves in Northern Ireland as a result of the NIRMS requirements.

Since this announcement, the UK Government have undertaken targeted engagement with stakeholders, and have set up an Industry Working Group to support businesses with meeting relevant requirements for the movement of goods between Great Britain and Northern Ireland including any 'not for EU' labelling. This is supplementary to existing routes of business engagement. This Industry Working Group is co-chaired by Defra officials and representatives from Defra stakeholders.

This engagement is intended to continue as part of the market monitoring aspect of the proposals to ascertain whether any delisting is taking place, and if so, whether it is as a result of the NIRMS requirements.

### **A note of other impact assessments, (if available)**

The UK Government has produced an Impact Assessment, which will be published alongside the SI.

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

Scottish Ministers were strongly opposed to the original, mandatory GB-wide version of this proposal, however this SI represents an acceptable compromise which balances the need to maintain supplies of agri-food goods to Northern Ireland with ensuring that Scottish businesses are not impacted unnecessarily. As it applies across GB, it makes sense to legislate for this using an SI, rather than legislate separately in each nation.

Given that the SI contains an exemption for small businesses it is estimated that, out of 1215 Scottish food and drink manufacturing and processing businesses, only 135 (11%) would be in scope of the SI. The UK Government Impact Assessment highlights the wide range of potential impacts that this SI could have on businesses, due to the significant uncertainty over if and when the SI will need to be activated and therefore the number of products which they will be required to label. However, it also notes strong evidence that implementation of the labelling requirements in

NIRMS phases 1 and 2 has not affected product choice and availability, with compliance of GB-NI movements being close to 100%.

In addition, the UK Government have made clear to Scottish Ministers that they only intend to use this SI as a last resort, if the market monitoring indicates a severe disruption to the supply of relevant goods to Northern Ireland and if this is unable to be resolved through further engagement with businesses (as detailed in the sections above).

Further, the UK Government and the European Union have now reached a common understanding to proceed with an SPS agreement which will facilitate the smooth flow of agrifood and plants from Great Britain to Northern Ireland. This labelling requirement will act as a bridge until this SPS agreement is implemented. On that basis, the UK Government has included a statutory review of the Regulations after two years rather than the usual five.

While the UK Government is seeking the consent of Scottish Ministers to make the SI, the power within it to determine if and when a notice should be issued lies solely with the Defra Secretary of State following consultation with the Scottish and Welsh governments. This is highly unusual, given that food labelling is in a devolved area of competence, however in this specific set of circumstances Scottish Ministers are prepared to consent to this arrangement in order to support the continuation of the power sharing agreement in Northern Ireland and the operation of the Windsor Framework, both of which the Scottish Government is fully supportive of. The Welsh Government has also taken a similar view, and is intending to consent to the SI. The UK Government has provided written reassurance that this SI will not set a precedent for this approach being used again in the future.

The Scottish Ministers undertake to keep the Committee informed should the UK Government request the views of the Scottish Government regarding issuing a notice using the powers in this SI.

### **Intended laying date (if known) of instruments likely to arise**

The Marking of Retail Goods Regulations 2025 (NID/017) is due to be laid on 5 June 2025.

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

The UK Government wishes for this SI to come into force at the same time as the start of Phase 3 of the NIRMS, i.e. 1 July 2025, in order for it to act as a sufficient deterrent to businesses who may delist products from Northern Ireland as a result of the extended labelling requirements in Phase 3.

It is regrettable that the UK Government only finalised its approach to this SI, and shared a sufficiently developed draft of it with the Scottish Government, in recent

days, and we have therefore been unable to comply with the requirement that members should have at least 28 days to consider a notification before the SI is laid.

As the SI is subject to the draft affirmative procedure, although it will be laid in draft on 5 June 2025 we have secured the agreement of the UK Government that the SI will not be made or debated in the UK Parliament until the Scottish Parliament has had time to complete its scrutiny of the SI. In order that this SI come into force on 1 July 2025 we would ask for your response by 12 June 2025.

### **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?**

- *details of any proposed governance arrangements and of any differences with existing EU governance arrangements, including in relation to: reporting or other requirements to provide information; complaints processes; the process for making changes to technical standards or best available techniques; consultation requirements, including requirements to follow or have regard to advice from e.g., expert committees (if available);*
- *a summary of any changes to EU technical standards or best available techniques (if available);*

None

### **Any significant financial implications?**

The costs arising from this SI will fall on the UK Government in terms of setting up and running the market monitoring aspects, and on Local Authorities in the form of enforcement and inspection costs if and when a notice is issued. The Impact Assessment accompanying the SI estimates that the annual cost of the enforcement aspect is likely to be around £0.2m.

The timing and level of the enforcement and inspections costs involved will be highly dependent on whether a notice is issued under the powers in the SI, and the volume and type of goods being targeted by that notice. The Impact Assessment sets out that there is strong evidence that implementation of the labelling requirements in NIRMS phases 1 and 2 has not affected product choice and availability, with compliance of GB-NI movements being close to 100%.





## SI NOTIFICATION: SUMMARY

<b>Title of Instrument</b>
The Marking of Retail Goods Regulations 2025
<b>Proposed laying date at Westminster</b>
5 June 2025, to come into force on 1 July 2025
<b>Date by which Committee has been asked to respond</b>
Thursday 12 June 2025
<b>Power(s) under which SI is to be made</b>
The SI is made in exercise of powers conferred by section 8C(1)(c) of the European Union (Withdrawal) Act 2018.
<b>Categorisation under SI Protocol</b>
Type 1
<b>Purpose</b>
<p>The UK Government's stated reason for this SI is to help safeguard the supply of agri-food goods into Northern Ireland, and to ensure that the availability of these products in Northern Ireland is not reduced as a result of the labelling requirements of Windsor Framework Northern Ireland Retail Movement Scheme (NIRMS).</p> <p>The Regulations will confer a power on the Defra Secretary of State to issue a notice that will require operators to individually mark the products specified in the notice as 'not for EU' before those products are placed on the market for sale to consumers in Great Britain.</p> <p>This notice will only be issued in the event that the Defra Secretary of State determines, following consultation with the Scottish and Welsh Governments, that the supply of relevant products to Northern Ireland is, or is likely to be, seriously adversely affected as a result of labelling requirements associated with NIRMS.</p> <p>The products that will be in scope of these Regulations are those that are in scope of the product-level labelling requirements associated with NIRMS.</p> <p>Once a notice has come into force, it will be the responsibility of the relevant enforcement authority (e.g. Local Authorities) to enforce its requirements. The Regulations provide for these authorities to carry out inspections and issue improvement notices and civil, financial penalties as necessary where there is non-compliance.</p>
<b>Other information</b>

As the SI is subject to the draft affirmative procedure, although it is intended to be laid in draft on 5 June 2025 we have secured the agreement of the UK Government that the SI will not be made or debated in the UK Parliament until the Scottish Parliament has had time to complete its scrutiny of the SI.

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