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Mr Finlay Carson MSP
The Convener,
Rural Affairs and Islands Committee
Scottish Parliament
EDINBURGH
EH99 1SP

22 June 2023

Dear Finlay,

EU EXIT LEGISLATION – PROTOCOL 2 WITH SCOTTISH PARLIAMENT
THE WINDSOR FRAMEWORK (RETAIL MOVEMENT SCHEME) REGULATIONS
2023 - (NID/011)
THE WINDSOR FRAMEWORK (PLANT HEALTH) REGULATIONS 2023 –
(NID/012)
THE WINDSOR FRAMEWORK (ENFORCEMENT ETC.) REGULATIONS 2023 –
(NID/013)
THE WINDSOR FRAMEWORK (RETAIL MOVEMENT SCHEME, PUBLIC HEALTH,
MARKETING AND ORGANIC PRODUCT STANDARDS AND MISCELLANEOUS
PROVISIONS) REGULATIONS 2023 - (NID/014)
THE WINDSOR FRAMEWORK (FINANCIAL ASSISTANCE) (MARKING OF
RETAIL GOODS) REGULATIONS 2023 - (NID/015)

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 legislation affecting devolved areas arising from EU Exit.

That protocol, as agreed between the Scottish Government and then 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.

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

NID/011, NID/012, NID/013, NID/014 and NID/015 are a package of five Statutory Instruments implementing parts of the Windsor Framework. The package of instruments aims to reduce trade frictions under the current Northern Ireland Protocol and improve the flow of trade withing the UK internal market.

Type 1 notifications for all five instruments are attached providing details of what the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in these SIs. Please note, we are yet to have sight of the final SIs and they are not available in the public domain at this stage. We will, in accordance with the Protocol, advise you when the final SIs are laid and advise you as to whether the final SIs are in keeping with the terms of this notification.

NID/011, NID/012 and NID/015 are subject to negative procedure. DEFRA plan to lay NID/011 in Westminster on 8 August 2023 and NID/012 and NID/015 on 30 August 2023. NID/014 is currently subject to draft affirmative procedure but we have been informed by DEFRA that it will likely be changed to the negative procedure, and we therefore propose to treat it as such for consent purposes. It is due to be laid on 17 July 2023 under affirmative procedure, but may be laid in August under negative procedure. NID/013 is subject to draft affirmative procedure and is due to be laid on 17 July 2023.

Due to the short timeframe between the Windsor Framework being agreed and its implementation, along with late receipt of near final drafts of these SIs, it has not been possible for the Scottish Government to comply with the requirements that members should have for scrutiny for both negative and affirmative procedures before the instruments are laid. I sincerely regret this, but the delays have been outside of the control of the Scottish Government – indeed, we only received acceptable drafts for 3 of the instruments yesterday. However, as NID/013 is subject to draft affirmative procedures, UKG has confirmed it will not be debated in Westminster until Scottish Parliament consent has been received.

Against that background, could you please respond by 30 June 2023. If the Committee would like 28 days to consider NID/013 however, before it is debated in Westminster, could you please respond within 28 days (not including the summer recess) of the date of this letter.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee, to the Minister for Green Skills, Circular Economy and Biodiversity and to the Minister for Energy and Environment.

Yours sincerely,



MAIRI GOUGEON

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

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NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Windsor Framework (Retail Movement Scheme) Regulations 2023 - (NID/011)

Is the notification Type 1 or Type 2?

Type 1

A brief overview of the SI

The Windsor Framework (Retail Movement Scheme) Regulations 2023 - (NID/011)

The SI is made in exercise of powers conferred by section 8C(1) of, and paragraph 21 of schedule 7 to, the European Union Withdrawal Act 2018.

The SI is subject to the negative procedure and is to be laid on 8th August 2023 to come into force on 1st September 2023 (to enable applications for scheme membership to be made in advance of 1st October 2023).

Summary of the proposals:

The Windsor Framework in relation to sanitary and phytosanitary measures will be implemented through an EU Regulation and a number of UK statutory instruments which give effect to relevant provisions in the UK . The provisions of NID/011 implement aspects of the Windsor Framework relating to the Retail Movement Scheme (ReMoS). Specifically, NID/011 provides for the establishment of ReMoS, which regulates the movement of certain retail goods from Great Britain for placing on the market for final consumers in Northern Ireland and what checks are to be made in respect of those goods.

NID/011 will make provision extending to all of the United Kingdom.

NID/011 will make the following provisions:

- It will require the Secretary of State to establish the Retail Movement Scheme, and require that to be done with the consent of the Scottish Ministers and Welsh Ministers to the terms and conditions of the Scheme
- It will require that specified retail goods may only be moved from Great Britain into Northern Ireland in compliance with the Scheme, and by a person approved to move specified retail goods and place those goods on the market in Northern Ireland under the Scheme
- It will prescribe how a person may apply to the Secretary of State for approval to move goods to which the Scheme applies into Northern Ireland, and grounds on which an application may be refused, or an approval suspended or cancelled
- It will prescribe processes for reviews and appeals where a person's application for such approval has been refused or where their approval has been suspended or cancelled.

- It will provide that persons authorised by the appropriate authority for the place in Great Britain where an establishment is situated may enter establishments to ascertain both that there is no relevant potential risk relating to the goods in question and that there is no breach of the terms and conditions of the Scheme. In relation to establishments in Scotland, the appropriate authority will be the Scottish Ministers. Persons authorised by the Scottish Ministers will also have powers to mitigate any relevant potential risk, for example seize goods giving rise to the risk.
- It will also make provision for checks by the Northern Ireland competent authority, and persons authorised by it, at points of entry into Northern Ireland and at premises in Northern Ireland where goods are moved under the Scheme with powers to prevent the movement of vehicles and to seize or dispose of goods.

In so far as these provisions extend to Scotland they relate to devolved matters. and the consent of the Scottish Ministers is sought for their inclusion in the instrument

Background

The Northern Ireland Protocol set out the post-Brexit 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 by the UK and EU in in February 2023 and represents a more risk-based and proportionate approach to border controls. 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.

As part of the implementation of the Windsor Framework, the Retail Movement Scheme (ReMoS) is intended to provide a dedicated arrangement to support the flow of agrifood retail products from Great Britain into Northern Ireland. It will replace the current mechanism used for this type of product, the Scheme for the Temporary Agrifood Movements to Northern Ireland (STAMNI).

Businesses moving goods under the ReMoS will be able to use the new green lane arrangements provided for in the Windsor Framework. This means that goods will move on the basis of a single General Certificate for eligible consignments, supported by a packing list. There will be no need for an official vet to approve the documentation. Instead, goods will move on the basis of a trader declaration under the authority of the UK competent authority. The movement of products which are not eligible for the ReMoS will continue using the red lane.

The Need for Change.

NID/011 is one of a number of statutory instruments which implement the Windsor Framework. The package of Regulations aim to reduce trade frictions under the

current Northern Ireland Protocol and improve the flow of trade within the UK internal market.

The current STAMNI mechanism was never intended to be in place for the long term. NID/011 establishes the core components of its replacement, the ReMoS, which is intended to be open to a broader range of businesses and goods on top of those already eligible under STAMNI, in addition to reducing the level of visual identification checks and physical checks required.

Consultation

The UK Government has considered and reflected engagement and consultation with interested stakeholders, including organisations moving goods between GB and NI, in drafting these Regulations. This has included Scottish stakeholders such as Food and Drink Federation Scotland, Scottish Whiskey Association, National Farmers Union Scotland, Scottish Agricultural Organisation Society, Scottish Bakers, and Seafood Scotland.

However, there has been no formal consultation.

Other information

This SI does not transfer any legislative functions.

The World Trade Organisation (WTO) does not need to be notified as these changes are for exports from GB to NI.

Four further UK SIs are included in the first tranche of Windsor Framework implementation, and have also been notified to the Scottish Parliament. These are:

- The Windsor Framework (Plant Health) Regulations 2023– (NID/012)
- The Windsor Framework (Enforcement etc) Regulations 2023 - (NID/013)
- The Windsor Framework (Retail Movement Scheme; Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023 – (NID/014)
- The Windsor Framework (Financial Assistance) (Marking of Retail Goods) Regulations 2023 - (NID/015)

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

No.

A note of other impact assessments, (if available)

This is a UK Government led scheme, and we have not yet been provided with any impact assessments for it.

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

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

- The Windsor Framework is required as a direct result of EU Exit, and so it is right that the UK Government should bear the costs of its implementation, including the development of a ReMoS-type scheme. In addition, the policy intention of supporting the flow of agrifood goods from GB to NI is aligned across the UK.
- The SI takes account of devolved competence. The consent of Scottish Ministers is required before the scheme can be established, and it will be for Scottish Ministers to determine who should carry out spot checks on establishments in Scotland.
- Therefore, Scottish Ministers consider that consenting to this SI under the Windsor Framework package is acceptable. For the Scheme to be operable provision needs to be made in relation to other parts of the UK as well as Scotland, which cannot be made by Scottish legislation. One scheme for the whole of the United Kingdom, in a UK SI provides clarity and confidence for businesses in this transitional period.

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

NID/011 will be made using the negative procedure, and it is intended to be laid on 8 August 2023 and come into force on 1st September 2023. This SI needs to come into force on that date so that applications to the Scheme can be made before it opens on 1 October 2023.

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

Due to the short timeframe between the Windsor Framework being agreed and its implementation, a developed draft of the SI was only agreed and shared in recent days. It is therefore regrettable that on this occasion it has not been possible to comply with the requirement that members should have a full 28 days to scrutinise before the instrument is laid.

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.

NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Windsor Framework (Plant Health) Regulations 2023 - (NID/012)

Is the notification Type 1 or Type 2?

Type 1

A brief overview of the SI

The Windsor Framework (Plant Health) Regulations 2023 - (NID/012)

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

The SI is subject to the negative procedure and is to be laid on 30th August 2023 to come into force on 1st October 2023.

Summary of the proposals:

The provisions of NID/012 implement aspects of the Windsor Framework relating to plant health. Specifically, NID/012 introduces the Northern Ireland plant health label (NI PH Label) regime into UK Plant Health legislation. The regime allows the movement of plants for planting, seed potatoes, and used agricultural/forestry vehicles and equipment (VME) between professional operators in Great Britain (GB) and Northern Ireland (NI) using a NI PH label and makes associated provision for the operation of the NI PH label. The Windsor Framework will be implemented through an EU regulation in relation to sanitary and phytosanitary measures and a number of UK statutory instruments which give effect to relevant provisions in UK law.

NID/012 makes the following provisions:

- It places obligations on Scottish Ministers, as the competent authority in relation to Scotland, to keep and maintain a register of professional operators who are either moving plant products for which a NI PH label is required, or are authorised to issue a NI PH label.
- It sets out the requirements and process for registering as a professional operator.
- It places an obligation on Scottish Ministers to grant authorisations to registered professional operators to issue NI PH labels where they meet the conditions set out in NID/012.
- It sets out the requirements for NI PH labels and provides that they may be issued only by registered professional operators or, in the case of seed potatoes, the Scottish Ministers.
- It requires professional operators intending to issue NI PH labels to identify and monitor critical points of their production process and the movement of plants for planting and used farm/forestry vehicles and machinery.
- It requires professional operators to ensure that appropriate training is provided to personnel involved in examinations.
- It provides that a NI PH label may only be issued in respect of goods which, following examination by the professional operator, are found to be in

compliance with the Plant Health Regulation (EU 2019/2031, 'PHR') and Official Controls Regulation (EU 2017/625 'OCR') and which are dispatched by an authorised operator to be received by an authorised operator for use only in the UK. Additional conditions are specified for the movement of seed potatoes.

- It requires the Scottish Ministers to carry out annual inspections of professional operators.
- It gives the Scottish Ministers powers to withdraw authorisation for non-compliance with the regulations.

Background

Under the current Northern Ireland Protocol, EU Sanitary and Phytosanitary (SPS) rules continue to apply in NI. Since 1st January 2021, all plants for planting, seed potatoes and used VME moving from GB to NI have been required to meet the EU's third country import rules. These products must be accompanied by a phytosanitary certificate (PC) and are subject to certain levels of documentary identity and physical checks. Seed potatoes have been prohibited from moving from GB to NI under the Northern Ireland Protocol.

The Windsor Framework was agreed by the UK and EU in February 2023 and represents a more risk-based and proportionate approach to border controls. 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. This approach is consistent with how imports are dealt with at GB borders and means that plants for planting and VME will no longer be subject to the same level of checks and will not require PCs to move to Northern Ireland. Instead, these goods will travel under the NI PH Label. Seed potatoes, previously prohibited from moving from GB to NI, will now be eligible for movement with a NI PH Label.

The Need for Change.

NID/012 is one of several statutory instruments which implement the Windsor Framework. The package of Regulations aims to reduce trade frictions under the current Northern Ireland Protocol and improve the flow of trade within the UK internal market.

NID/012 introduces the NI PH label, removing the requirement for phytosanitary certificates and identity checks for plants for planting and VME from GB to NI. It also lifts the ban on seed potato movements.

Four further UK SIs are included in the first tranche of Windsor Framework implementation, and have also been notified to the Scottish Parliament. These are:

- The Windsor Framework (Retail Movement Scheme) Regulations 2023 – (NID/011)
- The Windsor Framework (Enforcement etc.) Regulations 2023– (NID/013)
- The Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023 – (NID/014)

- The Windsor Framework (Financial Assistance) (Marking of Retail Goods) Regulations 2023 – (NID/015)

Consultation

The UK Government has considered and reflected engagement in consultation with interested stakeholders, including organisations moving goods between GB and NI. Amongst the stakeholders were The Plant Health Advisory Forum (PHAF) and Horticultural Trades Association both of which have Scottish members.

Other information

This SI does not transfer any legislative functions.

The World Trade Organisation (WTO) does not need to be notified as these changes relate to the movement of goods from GB to NI.

Further related changes are required and will also be taken forward on a UK-wide basis. These changes will enable respective competent authorities (including the Scottish Ministers) to carry out their obligations under NID/012 by creating an offence for non-compliance with the NI PH label.

These changes are addressed under a separate notification for The Windsor Framework (Enforcement etc) Regulations 2023 - (NID/013).

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

Provisional Plant Health Framework.

A note of other impact assessments, (if available)

An impact assessment has not been produced for this instrument, as no or no significant impact on the private or voluntary sector is foreseen at this time.

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

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

- The policy intention is aligned across the GB Plant Health Services (which consist of England, Scotland, and Wales), and by consenting to the use of devolved provision within NID/012 is consistent with previous plant health provisions
- Scottish Ministers consider that consenting to NID/012 is the most effective and transparent way to introduce these amendments. It provides clarity and confidence and continues close collaboration across the UK under the provisional Plant Health Common Framework.

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

NID/012 will be made using the negative procedure, and it is intended to be laid on 30th August 2023 to come into force on 1st October.

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

Due to the short timeframe between the Windsor Framework being agreed and its implementation, a developed draft of the SI was only shared in recent days. It is therefore regrettable that on this occasion it has not been possible to comply with the requirement that members should have a full 28 days to scrutinise before the instrument is laid.

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.

NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Windsor Framework (Enforcement etc) Regulations 2023 - (NID/013)

Is the notification Type 1 or Type 2?

Type 1

A brief overview of the SI

The Windsor Framework (Enforcement) Regulations 2023 - (NID/013)

The SI is made under section 8C(1) and paragraph 21 of schedule 7 of the European Union (Withdrawal) Act 2018.

The SI is subject to the draft affirmative procedure and is to be laid on 17 July 2023 to come into force on 1 October 2023.

Summary of the proposals:

The purpose of this instrument is to protect biosecurity and support trade between Northern Ireland (“NI”) and Great Britain (“GB”), following the agreement of the Windsor Framework.

NID/013 amends the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019 (SSI 2019/421) creating offences and establishing enforcement powers in respect of the Northern Ireland Plant Health Label Scheme.

Background

The Northern Ireland Protocol sets out the post-Brexit 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 by the UK and EU in February 2023 and represents a more risk-based and proportionate approach to border controls. 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.

The Windsor Framework will be implemented through a package of UK Regulations as well as a proposed EU Regulation in relation to sanitary and phytosanitary measures. The Northern Ireland Plant Health Label (“NI PH Label”) scheme for the movement of plants for planting, seed potatoes, and used agricultural/forestry vehicles and equipment (VME) between professional operators in GB and NI is one aspect of the Windsor Framework. The NI PH Label scheme places various obligations on

professional operators and gives enforcement powers to the Scottish Ministers to ensure compliance with the scheme. The scheme is being introduced under the Windsor Framework (Plant Health) Regulations 2023 (NID/012) which will come into force on 1st October 2023.

The Need for Change

Amendments to the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019 (SSI 2019/421) are required to ensure that appropriate enforcement and sanctions can be applied in GB and NI in respect of the Windsor Framework arrangements, including to address any non-compliance with the NI PH Label scheme.

Changes being made extending to Scotland

Amendments to Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019 (SSI 2019/421):

NID/013 amends Regulation 29 of the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019 (SSI 2019/421) providing powers of entry to plant health inspectors to any premises for the purposes of performing official controls to verify that an authorised operator, professional operator or registered operator is complying with the Windsor Framework (Plant Health) Regulations 2023, as well as further provisions extending the enforcement mechanisms generally available to the Scottish Ministers in respect of the plant passport regime to the NI Plant Health Label scheme.

NID/013 further amends SSI 2019/421 introducing Schedule 3A which creates new offences for breaches of the following requirements contained in the Windsor Framework (Plant Health) Regulations 2023 (NID/012):

- the requirement which prohibits the issuance of a Northern Ireland plant health label unless certain conditions are fulfilled.
- the provisions which require authorised operators to (a) identify and monitor the points in its production process and the points concerning the movement of the relevant goods where it intends to issue a Northern Ireland plant health label; and (b) to keep records concerning the identification and monitoring of those points for at least three years.
- the provision which requires authorised operators to ensure that appropriate training is provided to its personnel involved in examinations.
- the provision which imposes requirements in relation to attaching a Northern Ireland plant health label.
- the provisions which imposes requirements in relation to record keeping.
- the provision which imposes requirements in relation to issuance of a replacement Northern Ireland plant health label.
- the provision which imposes requirements in relation to invalidation and removal of a Northern Ireland plant health label.

- the provision which prohibits the despatch of consignments with a Northern Ireland plant health label to Northern Ireland by authorised operators and professional operators unless specified conditions are fulfilled.

Similar amendments are being made to domestic enforcement legislation in England and Wales.

Consultation

The UK Government has considered and reflected engagement in consultation with interested stakeholders, including organisations moving goods between GB and NI. Amongst the stakeholders were The Plant Health Advisory Forum (PHAF) and Horticultural Trades Association both of which have Scottish members.

Other information

This SI contains a number of Windsor Framework implementation provisions which do not extend to Scotland.

This SI does not transfer any legislative functions.

The World Trade Organisation (WTO) does not need to be notified as these changes relate to the movement of goods from GB to NI.

Four further UK SIs are included in the first tranche of Windsor Framework implementation, and have also been notified to the Scottish Parliament . These are:

- The Windsor Framework (Retail Movement Scheme) Regulations 2023 – (NID/011)
- The Windsor Framework (Plant Health) Regulations 2023 – (NID/012)
- The Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Products Standards and Miscellaneous Provisions) Regulations 2023 – (NID/014)
- The Windsor Framework (Financial Assistance) (Marking of Retail Goods) Regulations 2023 - (NID/015)

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

Provisional Plant Health Framework

A note of other impact assessments, (if available)

An impact assessment has not been produced for this instrument, as no or no significant impact on the private or voluntary sector is foreseen at this time.

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

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

- The policy intention is aligned across the GB Plant Health Services (which consist of England, Scotland, and Wales), and by consenting to the use of devolved provision within NID/012 is consistent with previous plant health provisions
- Scottish Ministers consider that consenting to this SI under the Windsor Framework package 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

NID/013 will be made using draft affirmative procedure, and it is intended to be laid on 17 July 2023 to be made and come into force on 1st October once approved by the UK Parliament.

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

Due to the short timeframe between the Windsor Framework being agreed and its implementation, a developed draft of the SI was only shared in recent days. It is therefore regrettable that on this occasion it has not been possible to comply with the requirement that members should have a full 28 days to scrutinise before the instrument is laid.

The UK Government has however undertaken not to move for debate and approval of this instrument in the UK Parliament until the consent of Scottish Ministers has been given. If the Parliament wished to have 28 days to scrutinise Scottish Minister's proposals for consent, that could be accommodated before debate on the instrument in the UK Parliament.

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.

NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023 (NID/014)

Is the notification Type 1 or Type 2?

Type 1

A brief overview of the SI

The Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023 (NID/014).

The SI is made in exercise of powers conferred by section 8C(1) of, and paragraph 21 of schedule 7 to, the European Union Withdrawal Act 2018.

The SI is currently subject to the draft affirmative procedure and is due to be laid on 17 July 2023, to come into force on 1 October 2023. However, the instrument may become subject to the negative procedure if the Retained EU Law (Revocation and Reform) Bill gains Royal Assent before the proposed laying date.

Summary of the proposals:

The Windsor Framework in relation to sanitary and phytosanitary measures will be implemented through an EU Regulation and a number of UK statutory instruments which give effect to relevant provisions in the UK .

NID/014 will make some provision which extends to Scotland, England and Wales only in relation to plants. It will also make provision which extends to Northern Ireland only in relation to consignments of retail goods entering into Northern Ireland under the Retail Movement Scheme (ReMoS).

The provisions which will extend to Scotland, England and Wales only will:

- Amend Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants (“the retained Plant Health Regulation”) regarding the introduction of qualifying NI goods into GB and their subsequent movement within GB. It will amend Article 95a of the retained Plant Health Regulation so that plants which have been moved from Great Britain into Northern Ireland can be re-introduced into Great Britain with either a plant passport or the plant health label which was required for its introduction into Northern Ireland.
- Amend 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 Control Regulation”), in relation to certain plant products which come from third countries other than the

EU or Switzerland. It will amend Annex 6 to the Official Control Regulation, which sets out certain easements and flexibilities that apply to imports from relevant third countries during the Transitional Staging Period (TSP). These will not apply to certain fruits and vegetables coming from outside the EU or Switzerland and are imported into GB. It will ensure that these plant products comply with the Windsor Framework and can be moved to NI from GB.

- Amend the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022, in relation to the frequency of checks on certain fruits and vegetables which enter Great Britain and come from countries other than EU Member States or Switzerland. It will provide that the frequency of checks rates determined by the appropriate authority must be no lower than the rates of such checks in respect of corresponding goods being imported into Northern Ireland. It will ensure that these plant products comply with the Windsor Framework and can be moved to NI from GB.

These provisions, in so far as they extend to Scotland, relate to devolved matters and the consent of the Scottish Ministers is sought for them.

NID/014 will also make provisions which extend to Northern Ireland only, and for which the consent of Scottish Ministers is not sought. Under Article 1(2) of the proposed EU Regulation on sanitary and phytosanitary measures, certain provisions of EU law which apply to and in the United Kingdom in respect of Northern Ireland under Annex 2 of the Protocol on Ireland/Northern Ireland do not apply in respect of consignments of consignments of retail goods entering into Northern Ireland from other parts of the UK and which are covered by the retail movement scheme in Part 2 of the proposed EU Regulation.

NID/014 will provide for the provisions of law in Great Britain which are to be treated as applying to consignments of retail goods entering into Northern Ireland in accordance with the Retail Movement Scheme, to the extent that EU law is disapplied by the proposed EU Regulation.

Background

The Northern Ireland Protocol set out the post-Brexit 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 by the UK and EU in February 2023 and represents a more risk-based and proportionate approach to border controls. 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.

As part of the implementation of the Windsor Framework, the Retail Movement Scheme (ReMoS) is intended to provide a dedicated arrangement to support the flow

of agrifood retail products from Great Britain into Northern Ireland. It will replace the current mechanism used for this type of product, the Scheme for the Temporary Agrifood Movements to Northern Ireland (STAMNI)

Amendments to Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants (“the retained Plant Health Regulation”) are required to allow the smooth flow of goods from NI to GB and within GB for qualifying Northern Ireland goods subject to the NI PH label scheme.

The Need for Change.

NID/014 is one of a number of statutory instruments which implement the Windsor Framework. The package of Regulations aim to reduce trade frictions under the current Northern Ireland Protocol and improve the flow of trade within the UK internal market.

Consultation

The UK Government has considered and reflected engagement and consultation with interested stakeholders, including organisations moving goods between GB and NI, in drafting these Regulations. Amongst the stakeholders were The Plant Health Advisory Forum (PHAF) and Horticultural Trades Association both of which have Scottish members.

However, there has been no formal consultation.

Other information

This SI does not transfer any legislative functions.

The World Trade Organisation (WTO) does not need to be notified as these changes are for exports from GB to NI.

Four further UK SIs are included in the first tranche of Windsor Framework implementation, and have also been notified to the Scottish Parliament. These are:

- The Windsor Framework (Retail Movement Scheme) Regulations 2023 – (NID/011)
- The Windsor Framework (Plant Health) Regulations 2023 – (NID/012)
- The Windsor Framework (Enforcement etc) Regulations 2023 - (NID/013)
- The Windsor Framework (Financial Assistance) (Marking of Retail Goods) Regulations 2023 - (NID/015)

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

Provisional Plant Health Framework

A note of other impact assessments, (if available)

We understand that the UK Government does not intend to produce an impact assessment for this instrument, as no or no significant impact on the private or voluntary sector is foreseen at this time.

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

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

- The policy intention is aligned across the GB Plant Health Services, and by consenting to the inclusion of devolved provision within NID/014 is consistent with previous plant health provisions.
- Scottish Ministers consider that consenting to NID/014 is the most effective and transparent way to introduce these amendments. It provides clarity and confidence and continues close collaboration across the UK under the provisional Plant Health Common Framework.

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

NID/014 will be made using the draft affirmative procedure, and it is intended to be laid on 17 July 2023 and come into force on 1 October 2023 once approved by the UK Parliament. However, the instrument may become subject to the negative procedure if the Retained EU Law (Revocation and Reform) Bill gains Royal Assent before the proposed laying date, in which case it may be laid in August 2023.

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

Due to the short timeframe between the Windsor Framework being agreed and its implementation, a developed draft of the SI was only shared in recent days. It is therefore regrettable that on this occasion it has not been possible to comply with the requirement that members should have a full 28 days to scrutinise before the instrument is laid.

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.

NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Windsor Framework (Financial Assistance) (Marking of Retail Goods) Regulations 2023 (NID/015)

Is the notification Type 1 or Type 2?

Type 1

A brief overview of the SI

The Windsor Framework (Financial Assistance) (Marking of Retail Goods) Regulations 2023 (NID/015).

The SI is made in exercise of powers conferred by sections 8C(1) and (2) of the European Union Withdrawal Act 2018.

The SI is subject to the negative procedure and is due to be laid on 30 August 2023, to come into force on 1 October 2023.

Summary of the proposals:

The Windsor Framework will be implemented through an EU regulation and a number of UK statutory instruments which give effect to relevant provisions in UK law. The provisions of NID/015 are related to the implementation of the Windsor Framework in relation to the Retail Movement Scheme (ReMoS). Specifically, NID/015 provides for financial assistance to be made available to businesses in respect of costs incurred in order to comply with the marking requirements for retail goods in the proposed EU Regulation on sanitary and phytosanitary measures (i.e. marking goods as “Not for EU”) from 1 October 2023.

NID/015 will make provision extending to all of the United Kingdom.

NID/015 will make the following provisions:

- It will give the Secretary of State power to grant financial assistance where expenditure has been incurred to comply with the marking of retail goods requirements in the proposed EU Regulation on sanitary and phytosanitary measures,. The Secretary of State will be able to delegate these functions to any other person, but, in relation to Scotland, only with the consent of the Scottish Ministers.
- It will require the Secretary of State to ensure that certain specified information about the businesses that have received payments is published on an annual basis (and that aggregated information is published for those businesses where the financial assistance provided is below a certain level).
- It will require businesses that are in receipt of financial assistance to supply, on request, information for the purposes of monitoring compliance with eligibility criteria and conditions.

- It will prescribe the steps by which the Secretary of State may determine that a breach of the conditions for financial assistance has been made, including the notice periods to be given to the business in question, and that the Secretary of State may withhold or recover any financial assistance payment made to the business as a result.
- It will prescribe how businesses that are determined to be in breach of the conditions may submit a request to the Secretary of State for that determination to be reconsidered.
- It will prescribe a further process for appeal, should a request for the reconsideration of a determination be unsuccessful.

In so far as these provisions extend to Scotland they relate to devolved matters and the consent of Scottish Ministers is sought for their inclusion in the instrument.

Background

The Northern Ireland Protocol set out the post-Brexit 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 by the UK and EU in February 2023 and represents a more risk-based and proportionate approach to border controls. 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.

As part of the implementation of the Windsor Framework, the Retail Movement Scheme (ReMoS) is intended to provide a dedicated arrangement to support the flow of agrifood retail products from Great Britain into Northern Ireland. It will replace the current mechanism used for this type of product, the Scheme for the Temporary Agrifood Movements to Northern Ireland (STAMNI).

Goods being moved under the ReMoS will be subject to labelling requirements, to ensure that these goods are not moved onwards into the EU. These requirements are due to be brought in through three phases between 1 October 2023 and July 2025 under the proposed EU Regulation on sanitary and phytosanitary measures. For phase 1, from 1 October 2023 individual product labels with the words "Not for EU" will be required for all meat products and some fresh dairy products that are moving from Great Britain to Northern Ireland. Phases 2 and 3, from 1 October 2024 and 1 July 2025 respectively, will expand the list of products which the individual labelling requirements apply to all milk and dairy products, and then all retail goods other than specified ones.

The Need for Change.

NID/015 is one of a number of statutory instruments which implement the Windsor Framework. The package of Regulations aim to reduce trade frictions under the current Northern Ireland Protocol and improve the flow of trade within the UK internal market.

The current STAMNI mechanism was never intended to be in place for the long term. NID/015 enables financial support to be provided to businesses in order to help them meet the costs of complying with the ReMoS, specifically in terms of new marking requirements that will be required from 1 October 2023 under the proposed new EU SPS regulation.

Consultation

The UK Government has considered and reflected engagement and consultation with interested stakeholders, including organisations moving goods between GB and NI, in drafting these Regulations. This has included Scottish stakeholders such as Food and Drink Federation Scotland, Scottish Whiskey Association, National Farmers Union Scotland, Scottish Agricultural Organisation Society, Scottish Bakers, and Seafood Scotland.

However, there has been no formal consultation.

Other information

This SI does not transfer any legislative functions.

The World Trade Organisation (WTO) does not need to be notified as these changes are for exports from GB to NI.

Four further UK SIs are included in the first tranche of Windsor Framework implementation, and have also been notified to the Scottish Parliament. These are:

- The Windsor Framework (Retail Movement Scheme) Regulations 2023 – (NID/011)
- The Windsor Framework (Plant Health) Regulations 2023– (NID/012)
- The Windsor Framework (Enforcement etc) Regulations 2023 - (NID/013)
- The Windsor Framework (Retail Movement Scheme; Public Health, Marketing and Organics Product Standards and Miscellaneous Provisions) Regulations 2023 – (NID/014)

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

No.

A note of other impact assessments, (if available)

This is a UK Government led scheme, and we have not yet been provided with any impact assessments for it.

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

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

- The Windsor Framework is required as a direct result of EU Exit, and so it is right that the UK Government should bear the costs of its implementation, including the development of a ReMoS-type scheme and reimbursing businesses for any additional expenditure required as a result. In addition, the policy intention of supporting the flow of agrifood goods from GB to NI is aligned across the UK.
- Therefore, Scottish Ministers consider that consenting to this SI under the Windsor Framework package is the most effective and transparent way to introduce such a scheme. It provides clarity and confidence, and continues close collaboration across the UK.

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

NID/015 will be made using the negative procedure, and it is intended to be laid on 30 August 2023 and come into force on 1 October 2023.

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

Due to the short timeframe between the Windsor Framework being agreed and its implementation, a developed draft of the SI was only shared in recent days. It is therefore regrettable that on this occasion it has not been possible to comply with the requirement that members should have a full 28 days to scrutinise before the instrument is laid.

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.

