

EXPLANATORY MEMORANDUM TO
THE WINDSOR FRAMEWORK (UK INTERNAL MARKET AND UNFETTERED
ACCESS) REGULATIONS 2024

2024 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The United Kingdom Internal Market Act 2020 prohibits new checks and controls on qualifying Northern Ireland goods moving directly from Northern Ireland to Great Britain in accordance with section 47 of that Act, and makes provision for this protection to be extended to other types of movements.
- 2.2 The Government has committed to legislating to guarantee unfettered access for Northern Ireland’s businesses to the whole of the UK internal market, via both direct routes from Northern Ireland to Great Britain, and via indirect routes, through Ireland. The instrument’s purpose is therefore fourfold.
- 2.3 Firstly, the instrument extends those protections for qualifying Northern Ireland goods to indirect movements of qualifying Northern Ireland goods through Ireland.
- 2.4 Secondly, this instrument amends the definition of qualifying Northern Ireland goods, currently set out in the Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020. This status is conferred on any good that is or has been present in Northern Ireland and not subject to customs supervision and/or goods which are Northern Ireland processed products within the meaning of those Regulations. The amended definition will focus the benefits of unfettered access more squarely on Northern Ireland traders.
- 2.5 Thirdly, in order to provide clarity the instrument affirms unfettered access for qualifying Northern Ireland goods to the rest of the UK, and provides certainty that that access will persist notwithstanding any future changes in regulatory provisions in either Northern Ireland or the rest of the United Kingdom. It is consistent with the UK's relevant international commitments which relate to unfettered access.
- 2.6 Finally, the instrument will provide the Secretary of State with a power to issue statutory guidance to assist appropriate authorities in the exercise of their duty under section 46 of the UK Internal Market Act 2020 and a corresponding duty on appropriate authorities to have regard to that guidance.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument contains certain descriptive provisions that are intended to clarify the legislative regime that protects and provides for unfettered access.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument is the same as its extent.

5. European Convention on Human Rights

- 5.1 The Minister of State at the Cabinet Office, Baroness Lucy Neville-Rolfe, has made the following statement regarding Human Rights:

“In my view the provisions of the Windsor Framework (UK Internal Market and Unfettered Access) Regulations 2024 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument should be understood in the context of the following legislation which underpins the unfettered access regime and the duty to have special regard to Northern Ireland's place in the UK internal market and customs territory.
- 6.2 Section 47 of the UK Internal Market Act 2020 provides for unfettered access for qualifying Northern Ireland goods moving directly from Northern Ireland to Great Britain. It provides that no new ‘check, control or administrative process’ is permitted for these goods when moving on this route, except for in limited circumstances such as where they are required due to the UK’s international obligations.
- 6.3 Part 1 of the UK Internal Market Act 2020 establishes the mutual recognition and non-discrimination principles, ensuring that if a good meets the standards required to be placed on the market in one part of the UK, it can be sold in another part without having to meet any additional requirements. These principles apply to qualifying Northern Ireland goods.
- 6.4 The Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020 establishes the definition of the qualifying Northern Ireland goods, namely any goods that fall into the following two categories: (1) the goods are lawfully present in Northern Ireland and are not subject to customs control (other than customs procedures arising on export), or (2) the goods are Northern Ireland processed products. The second category of goods seeks to ensure that goods that have undergone processing in Northern Ireland can qualify for the definition even where they have been moved under customs control.
- 6.5 The Windsor Framework made important new provisions on unfettered access, removing the requirement to provide export declarations, or any equivalent information, for goods moving directly from Northern Ireland to Great Britain, except in limited circumstances, such as in relation to the movement of endangered species.
- 6.6 Section 46 of the UK Internal Market Act 2020 also places a duty on appropriate authorities, when exercising their functions for a relevant purpose to have special regard to a number of factors including Northern Ireland's place in the UK internal market and customs territory.
- 6.7 Section 8C(1) and (6) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 confer power to implement the Windsor Framework through regulations. Similarly, section 47(9) of the UK Internal Market Act confers powers to amend section 47 of that Act.

7. Policy background

What is being done and why?

- 7.1 Unfettered access policy is based on three core elements, which these regulations reinforce, as part of fulfilling commitments made to secure the restoration of the Northern Ireland institutions following the conclusion of discussions between the Government and the Democratic Unionist Party.
- 7.2 Firstly, the absence of UK customs and regulatory checks and processes for qualifying Northern Ireland goods moving from Northern Ireland to Great Britain, with only exceptionally limited exceptions (such as the movement of endangered species). Secondly, no additional authorisations or approvals required for placing qualifying Northern Ireland goods on the market in the rest of the UK (again with only exceptionally limited exceptions). Thirdly, that qualifying Northern Ireland goods should not be discriminated against when sold on the rest of the UK market, irrespective of whether or not there has been any underlying regulatory divergence.
- 7.3 Engagement with Northern Ireland businesses has identified that a significant proportion of goods moving from Northern Ireland to Great Britain do so through Ireland for instance to reduce overall journey times to Wales or southern England. Given the economic importance of this route to Northern Ireland businesses, this instrument will therefore apply the protections established in section 47 of the UK Internal Market Act 2020 to qualifying Northern Ireland goods, whether they move directly to Great Britain, or indirectly via Ireland.
- 7.4 Engagement with Northern Ireland businesses also highlighted specific concerns regarding the current definition of a qualifying Northern Ireland goods, and the extent to which it could be applied to goods originating outside of Northern Ireland and with no connection to Northern Ireland. To address this, this instrument amends the definition of a qualifying Northern Ireland good for the food and feed sector.
- 7.5 This change requires food or feed to be dispatched from - and therefore under the control of - a Northern Ireland registered or approved establishment in order to be considered a qualifying Northern Ireland good for sanitary and phytosanitary purposes, removing the possibility that non-Northern Ireland businesses can take advantage of these unfettered access protections. This does not represent an additional burden to Northern Ireland businesses as establishments handling, processing or distributing food and feed already require registration or approval under Northern Ireland food and feed law. Guidance will be issued in due course to clarify how this definition should be applied..
- 7.6 The instrument also ensures that goods moved for an avoidance purpose (that is, the purpose of avoiding customs and/or sanitary and phytosanitary checks), in addition to goods which are moved from Ireland to Great Britain and which pass through Northern Ireland without being unloaded, are treated as non-qualifying goods. Accordingly, this ensures that these goods must undergo the required customs and regulatory checks and controls.
- 7.7 These provisions recognise that the Windsor Framework does not prevent the UK from providing for unfettered access for qualifying Northern Ireland goods moving from Northern Ireland to Great Britain, or require the provision of export declarations, or any equivalent information, for Northern Ireland to Great Britain movements except in an exceptional subset of cases such as for endangered species. They also

recognise that, in accordance with the United Kingdom Internal Market Act 2020, an appropriate authority must have special regard to the need to maintain Northern Ireland's integral place in the United Kingdom's internal market, and that the mutual recognition and non-discrimination principles apply to the sale of goods in Northern Ireland in accordance with Part 1 of that Act.

- 7.8 The instrument also provides the Secretary of State with a power to issue statutory guidance to assist appropriate authorities in the exercise of their existing duty under section 46 of the UK Internal Market Act.

What did any law do before the changes to be made by this instrument?

- 7.9 Section 47 of the UK Internal Market Act 2020 supports the delivery of the Government's commitment to unfettered access for qualifying Northern Ireland goods moving from Northern Ireland into Great Britain. It does so by precluding new checks, controls or administrative processes on qualifying goods as they move from Northern Ireland to Great Britain (unless subject to the limited exceptions already set out in subsection 47(2) of that Act). It similarly precludes the use of existing checks, controls or processes being used for the first time, or for a new purpose or to a new extent.

- 7.10 The Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020 sets out the definition of qualifying Northern Ireland goods. That is, any good that is or has been present in Northern Ireland and is not subject to customs supervision, or any Northern Ireland processed good.

- 7.11 Section 46 of the UK Internal Market Act 2020 also places a duty on appropriate authorities, when exercising their functions for a relevant purpose, to have special regard to the need to (i) maintain Northern Ireland's place in the UK internal market, (ii) respect Northern Ireland's part of the UK's customs territory and (iii) facilitate the free flow of goods between Great Britain and Northern Ireland.

Why is it being changed?

- 7.12 Engagement with Northern Ireland businesses and the Northern Ireland Departments has identified that a significant proportion of goods moving from Northern Ireland to Great Britain do so through Ireland, on the basis of faster transportation. This route is of economic importance to Northern Ireland businesses. These Regulations will apply unfettered access protections for indirect movements of qualifying Northern Ireland goods moving through Ireland.

- 7.13 On the back of this engagement, this instrument also takes measures to improve biosecurity by amending the definition of a qualifying Northern Ireland good. As noted above, this does not affect the position for customs, meaning that customs controls, checks and formalities would only apply to the goods if they fell within an exception referred to in paragraph 7.2. It additionally makes goods moved for an avoidance purpose non-qualifying goods, ensuring that these goods must undergo the required customs and regulatory checks and controls.

- 7.14 To ensure the operation of the internal market and unfettered access regime is understood, this instrument signposts the relevant legislation and international commitments. The Government also considers that clarity is required for appropriate authorities throughout the UK on how they should uphold their existing duty under section 46 of the UK Internal Market Act 2020.

What will it now do?

- 7.15 This instrument will apply the protections established in section 47 of the UK Internal Market Act 2020 to qualifying Northern Ireland goods, whether they move directly to Great Britain, or indirectly via Ireland.
- 7.16 This instrument will also amend the Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020 to require food or feed, as well as meeting current requirements, to be dispatched from – and therefore under the legal control of - an NI registered or approved food or feed establishment to be considered a qualifying Northern Ireland good for sanitary and phytosanitary purposes. Goods moved for an avoidance purpose will not be qualifying Northern Ireland goods. The instrument includes transitional provisions in relation to these changes such that they will not apply to goods that already have the status of a qualifying Northern Ireland good and are either in Great Britain or have already departed a port or airport in Northern Ireland or Ireland for the purposes of movement to Great Britain, but not yet arrived in Great Britain.
- 7.17 The instrument makes clear the legislation that creates internal market and unfettered access protections. It will also allow the Secretary of State to issue guidance on the duty in section 46 of the United Kingdom Internal Market Act 2020 with a corresponding duty on appropriate authorities to have regard to that guidance.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made to address a deficiency in retained EU law but relates to the withdrawal of the United Kingdom from the European Union because it is being made under section 8C(1) and (6) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.
- 8.2 Alongside the EU (Withdrawal) Act 2018 powers the amendment to section 47 of the UK Internal Market Act is being made under the powers in section 47(9) in the UK Internal Market Act 2020.

9. Consolidation

- 9.1 There are no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

- 10.1 The Government undertook engagement with businesses in Northern Ireland on the approach to delivering unfettered access. The legislative approach firmly reflects feedback from stakeholders. Northern Ireland departments have also been involved in these engagements.

11. Guidance

- 11.1 Guidance on the UK Government’s approach to unfettered access was most recently updated on 29 August 2023, and is available on the GOV.UK website.¹ This will be updated to take account of this instrument once passed.

¹ <https://www.gov.uk/guidance/moving-qualifying-goods-from-northern-ireland-to-the-rest-of-the-uk>

12. Impact

- 12.1 There is no significant impact on charities, or voluntary bodies or the public sector. The purpose of this instrument is to ensure the smooth flow of trade across the United Kingdom by making certain provision in respect of trade moving from Northern Ireland to Great Britain.
- 12.2 An Impact Assessment has not been prepared for this instrument because the cost to business is de minimis—the instrument will facilitate the smooth access of Northern Ireland businesses to the UK market and to ensure that the actions of appropriate authorities exercising a relevant function under section 46 of the UK Internal Market Act 2020 are commensurate with this objective.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses as the express intent of this instrument is to ensure continuity and protection for those businesses in moving their goods, and the legal requirements do not differentiate between businesses in terms of their size. Indeed, the instrument reduces the regulatory burden that small businesses will face compared with the alternative. This is because, without the instrument, those businesses would be unable to benefit from unfettered access for qualifying Northern Ireland goods moved to Great Britain indirectly via Ireland. Further, any guidance on section 46 published in accordance with this instrument and the corresponding duty to have regard to that guidance will only apply to the persons listed under section 46(3) of the UK Internal Market Act 2020 which does not include small businesses.

14. Monitoring & review

- 14.1 The Department intends to keep the operation of this instrument under review as part of its ongoing engagement with industry and the Northern Ireland Executive.

15. Contact

- 15.1 Zachary Beer at the Cabinet Office (email: zachary.beer@cabinetoffice.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Paul Flynn, Deputy Director for the Windsor Framework Taskforce, at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister of State Baroness Lucy Neville-Rolfe, Minister of State at the Cabinet Office responsible for the Windsor Framework and Border Target Operating Model can confirm that this Explanatory Memorandum meets the required standard.