

EXPLANATORY MEMORANDUM TO
THE DEFINITION OF QUALIFYING NORTHERN IRELAND GOODS (EU EXIT)
REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

- 2.1 The UK Government has committed to legislating to guarantee unfettered access for Northern Ireland’s businesses to the whole of the UK internal market, and ensure that this legislation is in force for 1 January 2021.
- 2.2 The European Union (Withdrawal) Agreement 2018 (“EUWA”) allows for provisions to be made facilitating the access to the market within Great Britain of qualifying Northern Ireland goods. This instrument sets out the definition of qualifying Northern Ireland goods.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The instrument should be seen in the wider context of proposed legislation to deliver unfettered access. Whilst this instrument sets out the initial definition of qualifying Northern Ireland goods, the broader elements of unfettered access policy are being delivered through the UK Internal Market Bill. The UK Internal Market Bill contains provisions that (i) prohibit any new checks or controls, or existing checks or controls being used for the first time or for a new purpose or extent, on qualifying Northern Ireland goods; and (ii) apply the principles of mutual recognition and non-discrimination to qualifying Northern Ireland goods, such that they can be freely placed on the market throughout Great Britain. The definition of qualifying Northern Ireland goods, as provided for in these The Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020, will be relied upon for the purposes of those provisions in the UK Internal Market Bill as well as being relied upon for provisions in a number of statutory instruments necessary to deliver unfettered access policy and due to be laid using powers under s 8(C) EUWA.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 24 European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited by the Act or by the instrument.

4. Extent and Territorial Application.

4.1 The territorial extent of this instrument is England and Wales, Northern Ireland and Scotland.

4.2 The territorial application of this instrument is the same as its extent.

5. European Convention on Human Rights

5.1 Her Majesty's Paymaster General has made the following statement regarding Human Rights:

“In my view the provisions of The Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

6.1 In the Command Paper entitled ‘The UK’s Approach to the Northern Ireland Protocol’ UKG made the following commitment:

“The Protocol is clear that nothing in it prevents Northern Ireland business enjoying unfettered access to the rest of the UK internal market. We will ensure this. As set out in New Decade, New Approach, we will legislate to guarantee unfettered access for Northern Ireland’s businesses to the whole of the UK internal market, and ensure that this legislation is in force for 1 January 2021.”

6.2 This instrument deals with the underlying question of what is defined as a qualifying Northern Ireland good (“QNIG”) through powers to establish the definition of Northern Ireland qualifying goods in regulations made under section 8(C)(6) of EUWA.

7. Policy background

What is being done and why?

7.1 Unfettered access is based on several elements:

- the absence of customs and regulatory checks and processes for qualifying Northern Ireland goods moving from Northern Ireland to Great Britain, with only limited exceptions (such as when upholding international obligations such as those concerning the movement of endangered species);
- no additional authorisations or approvals required for placing QNIGs on the market in the rest of the UK (again with only very limited exceptions for very high-risk goods);
- that QNIGs should be recognised for sale on the UK market notwithstanding that the goods are made according to the rules applied by the Protocol, and not to be discriminated against by virtue of having to adhere to those rules.

7.2 This instrument facilitates the broader delivery of the Government’s unfettered access commitments by providing a definition for the goods which qualify for the treatment so as to avoid disruption from the end of the transition period.

7.3 For the purposes of this instrument, a qualifying Northern Ireland good is defined as any good that falls within one of 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. This initial broad definition best ensures continuity and avoids any disruption from the end of the transition period, in line with the broader approach being taken for goods arriving into Great Britain from the EU for the first half of next year. This is part of a phased approach and will be followed by further proposals from the UK Government, developed with Northern Ireland business, for qualifying status for the longer-term.

- 7.4 This will be drawn upon through the UK Internal Market Bill, as well as a number of instruments to be adopted using the power in section 8C of the European Union (Withdrawal) Act 2018, to provide for robust protections that guarantee Northern Ireland goods continue to enjoy unfettered access to the UK market.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8C of the European Union (Withdrawal) Act 2018.

9. Consolidation

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

10. Consultation outcome

- 10.1 The Government undertook formal engagement with businesses in Northern Ireland on the proposed definition of QNIGs. This engagement will continue in keeping the definition under constant review. The Northern Ireland Executive have also been involved in those engagements.

11. Guidance

- 11.1 Guidance on the UK's approach to the Protocol and, in particular, to unfettered access, was published on 7 August 2020 and is available on the GOV.UK website. The Government will publish further guidance in due course.

12. Impact

- 12.1 There is no significant impact on business, charities or voluntary bodies. The purpose of the instrument is to avoid disruption for businesses and provide continuity for trade in goods moving from Northern Ireland to Great Britain.
- 12.2 A potential impact more broadly would be in the event that businesses sought to inappropriately re-route goods in order to avoid otherwise applicable import formalities. This will be addressed by means of separate legislation, to be brought forward before the end of the year, which would enable action to be taken where any business looked to re-route their goods through NI for this purpose.
- 12.3 An Impact Assessment has not been prepared for this instrument because the instrument seeks to provide continuity for businesses operating in Northern Ireland in their access to the UK market following the end of the Transition Period

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 is to ensure continuity for those businesses in moving their goods, and the legal requirements do not differentiate between businesses in terms of their size.

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 as to the best long-term approach to deliver unfettered access for Northern Ireland businesses.

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Hannah Price at the Cabinet Office (Transition Task Force) Telephone: +44 (0) 754 651 3889 or email: hannah.price1@cabinetoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Mark Davies, Deputy Director for the Northern Ireland Protocol, at the Cabinet Office (Transition Task Force) can confirm that this Explanatory Memorandum meets the required standard.

15.3 Her Majesty's Paymaster General at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

1.1 Her Majesty's Paymaster General has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Definition of Qualifying Northern Ireland Qualifying Goods (EU Exit) Regulations 2020 does no more than is appropriate”.

1.2 This is the case because it seeks to implement commitments the UK Government has made to legislate to guarantee unfettered access for Northern Ireland's businesses to the whole of the UK internal market in line with the Protocol.

2. Good reasons

2.1 Her Majesty's Paymaster General has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

2.2 We are introducing an instrument to prepare for the end of the Transition Period and to protect the status of Northern Ireland in the United Kingdom's internal market, in line with the Protocol.

3. Equalities

3.1 Her Majesty's Paymaster General has made the following statement:

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.