

EXPLANATORY MEMORANDUM TO
THE OFFICIAL CONTROLS (NORTHERN IRELAND) REGULATIONS 2023
2023 No. 17

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to ensure that official controls can be carried out at appropriate facilities in Northern Ireland. This instrument enables the Secretary of State for the Department for Environment, Food and Rural Affairs to ensure that enhancements to existing facilities can be executed.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is Northern Ireland.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Northern Ireland.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution, no statement is required.

6. Legislative Context

- 6.1 Section 7A of the European Union (Withdrawal) Act 2018 allows for the “General implementation of remainder of withdrawal agreement”. This includes Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products (the Official Controls Regulation).
- 6.2 Article 59(1) of the Official Controls Regulation sets out a requirement to have facilities in place “for the purpose of performing official controls”. Article 64 sets out the requirements for these facilities, including to have “a sufficient number of suitably qualified staff” in place.
- 6.3 Section 8C of the European Union (Withdrawal) Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020), provides a power “in connection with Ireland/Northern Ireland Protocol in withdrawal agreement”. Section 8C(1) of the Act states that “a Minister of the Crown may by regulations make such provision as the Minister considers appropriate”, including to “to implement the

Protocol on Ireland/Northern Ireland in the withdrawal agreement” and “otherwise for the purposes of dealing with matters arising out of, or related to, the Protocol”.

- 6.4 In order to ensure compliance with Article 64 of the Official Controls Regulation, this instrument will grant the Secretary of State powers.
- 6.5 These powers will be necessary to implement either a negotiated solution with the European Union, or to implement the Northern Ireland Protocol Bill (the ‘Bill’). The Bill, currently before Parliament, includes powers that would also require the enhancement of infrastructure at Northern Ireland ports (for example, section 5(3) creating regulation making powers for checks and controls). As these powers are not yet in force, and the infrastructure improvements have a significant lead in time, it is appropriate to use the existing powers available.

7. Policy background

What is being done and why?

- 7.1 Official controls refer to the mechanisms in place and checks carried out to verify that businesses comply with agri-food rules. Agri-food rules, amongst other things, govern the safety and quality of food, feed, plant health, animal health and welfare in the food production chain. Carrying out official controls requires sufficient sanitary and phytosanitary (‘SPS’) facilities and suitably qualified staff.
- 7.2 It was agreed in 2020, by the Northern Ireland Executive, that the Department for Agriculture, Environment and Rural Affairs (‘DAERA’) would build the facilities to deliver SPS checks required by the Protocol on Ireland/Northern Ireland (‘the Protocol’). The necessary construction has not taken place to date owing to wider concerns about the Protocol’s implementation.
- 7.3 To address the social, political and economic difficulties that the Protocol has caused, the UK Government is putting in place revised arrangements for the operation of the Protocol. This involves preparing to be able to deliver red and green lane arrangements for the movement of sanitary and phytosanitary goods.
- 7.4 As set out in [Northern Ireland Protocol: the UK’s solution](#) in July 2022, while the green lane will provide unique arrangements for internal UK trade under a new trusted trader scheme, red lane arrangements would mean that goods going to the EU would be subject to full EU checks and controls and full customs procedures. This requires the enhancement of the existing, temporary, SPS facilities in Northern Ireland. In the absence of a Northern Ireland Executive and Assembly, it now falls to the UK Government to take that work forward.

Explanations

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

- 7.5 The terms of the UK’s departure from the EU were agreed and set out in the Withdrawal Agreement. This included the Protocol which sets out unique arrangements for Northern Ireland. Article 5(4) of the Protocol sets out that “provisions of Union law listed in Annex 2 to this Protocol shall also apply, under the conditions set out in that Annex, to and in the United Kingdom in respect of Northern Ireland”. This includes the Official Controls Regulation.
- 7.6 Schedule 2 of the Northern Ireland Act 1998 sets out Excepted Matters for Northern Ireland. Section 3(c) of this Schedule posits that the “[observation] and

[implementation] of international obligations is not an excepted matter”. Therefore, under the terms of section 4(1) of the Act, where “transferred matter” means any matter which is not an excepted or reserved matter”, it is the responsibility of the Northern Ireland Executive to implement international obligations.

Why is it being changed?

- 7.7 The text of existing legislation is not being changed. This instrument creates a new concurrent power.

What will it now do?

- 7.8 The Secretary of State for Defra will have the power to do anything that they consider appropriate for the purpose of implementing Article 64. The power may only be exercised in connection with the construction of facilities for the purpose of performing official controls. Additionally, the instrument creates a power to direct the competent authority in Northern Ireland to recruit and employ staff to implement Article 64.

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 s8C of the European Union (Withdrawal) Act 2018, as amended by the European Union (Withdrawal Agreement) Act 2020.

9. Consolidation

- 9.1 There is no consolidation done by this instrument.

10. Consultation outcome

- 10.1 There has been no consultation on this specific instrument. However, Defra has engaged in extensive consultation regarding the UK Government Command Paper and the Northern Ireland Protocol Bill with stakeholders and industry. Defra officials also meet frequently with organisations from the whole Northern Ireland agri-food supply chain. Industry have sought stability in order to ensure credibility and confidence in goods moving into the European Union Single Market.

11. Guidance

- 11.1 Lord Benyon has written to Lord Jay of Ewelme, Chair of the Protocol on Ireland/Northern Ireland Sub-Committee, copied to other relevant committee chairs, regarding this legislation. This is publicly available here:
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1126848/20221228 - SPS Facilities NI - Lord Benyon to Committee Chairs - final signed.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1126848/20221228_-_SPS_Facilities_NI_-_Lord_Benyon_to_Committee_Chairs_-_final_signed.pdf)
- 11.2 There is no guidance available for this instrument, as Defra will be ensuring the implementation of an existing commitment. As the facilities are constructed, Defra will provide guidance and engage with stakeholders.

12. Impact

- 12.1 There is no significant, impact on business, charities or voluntary bodies. These regulations will ensure that the existing commitment can be executed in full.

- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because, as above, this relates to implementation of an existing commitment.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 Should the Northern Ireland Executive reform, this legislation and its associated responsibilities will be reviewed. Defra will work closely with DAERA on these matters.

15. Contact

- 15.1 Hannah Duignan-Murphy at the Department for Environment, Food and Rural Affairs Telephone: 07880445941 or email: Hannah.Duignan-Murphy@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 James Cruddas, Deputy Director for Northern Ireland Strategy, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Benyon, Minister for Biosecurity, Marine and Rural Affairs, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.