

2023 No. 896

EXITING THE EUROPEAN UNION

**The Windsor Framework (Retail Movement Scheme)
Regulations 2023**

Made - - - - at 11.55 a.m. on 8th August 2023

Laid before Parliament at 3.00 p.m. on 8th August 2023

Coming into force in accordance with regulation 1(2)

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 8C(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(a).

In making these Regulations, the Secretary of State has had special regard to the matters listed in section 46 of the United Kingdom Internal Market Act 2020(b).

PART 1

PRELIMINARY

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Windsor Framework (Retail Movement Scheme) Regulations 2023.

(2) These Regulations come into force—

- (a) for the purposes of this Part and Part 2, on 1st September 2023;
- (b) for all other purposes, on 1st October 2023.

(3) These Regulations extend to England and Wales, Scotland and Northern Ireland.

Interpretation

2.—(1) In these Regulations—

“the SPS Regulation” means Regulation (EU) 2023/1231 of the European Parliament and of the Council on specific rules relating to the entry into Northern Ireland from other parts of the United Kingdom of certain consignments of retail goods, plants for planting, seed potatoes,

(a) 2018 c. 16. Section 8C was inserted by section 21 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) (“the 2020 Act”) and amended by section 55(3) of the United Kingdom Internal Market Act 2020 (c. 27). Paragraph 21 of Schedule 7 was amended by paragraph 53(2) of Schedule 5 to the 2020 Act. Further to the Joint Declaration No. 1/2023 of the EU and the United Kingdom in the Joint Committee established by the Withdrawal Agreement of 24 March 2023, the Protocol (as amended by Joint Committee Decision No. 1/2023) is now known as the “Windsor Framework”.

(b) 2020 c. 27.

machinery and certain vehicles operated for agricultural or forestry purposes as well as non-commercial movements of certain pet animals into Northern Ireland(a);

“applicant” means a person applying—

- (a) for approval to move specified retail goods into Northern Ireland under the Scheme under regulation 3(5); or
- (b) to add or remove an establishment as a listed establishment under regulation 8(1);

“appropriate GB authority” has the meaning given in regulation 18;

“food business operator” is to be construed in accordance with Article 3 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(b);

“IUU risk” means the risk of the placing on the market within the European Single Market of fishery products originating from fishing activities which are illegal, unreported or unregulated, for the purposes of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing(c);

“the Northern Ireland department” means the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;

“relevant potential risk” means—

- (a) any potential biosecurity risk to the island of Ireland or any IUU risk, arising from the movement of the specified retail goods into Northern Ireland; or
- (b) any other risk which might arise from the movement of the specified retail goods into the European Union;

“the Scheme” means the Retail Movement Scheme established by regulation 3(1) which is designed to implement Part 2 of the SPS Regulation;

“specified retail goods” means retail goods for placing on the market in Northern Ireland for the final consumer.

(2) References in these Regulations to the terms and conditions of the Scheme are to such terms and conditions relating to the movement of specified retail goods from Great Britain into Northern Ireland as are determined by the Secretary of State(d).

(3) Terms defined in Article 2 of the SPS Regulation bear the same meaning for the purposes of these Regulations.

PART 2

RETAIL MOVEMENT SCHEME

Retail Movement Scheme

3.—(1) The Secretary of State must establish the Retail Movement Scheme.

(2) Before establishing the Scheme under paragraph (1), the Secretary of State must have obtained the consent of—

- (a) the Scottish Ministers;
- (b) the Welsh Ministers; and

(a) OJ No L 165, 29.6.2023, p.103.

(b) OJ No L 031 1.2.2002, p. 1.

(c) OJ No L 286, 29.10.2008, p. 1.

(d) Electronic copies of the terms and conditions may be obtained via <https://www.gov.uk/guidance/contact-defra>. Hard copies may be obtained from the Department for Environment, Food and Rural Affairs, Seacole Building, 2 Marsham Street, London, SW1P 4DF.

(c) the Northern Ireland department,
to the terms and conditions of the Scheme.

(3) Before modifying the terms and conditions of the Scheme, the Secretary of State must have obtained the consent of—

- (a) the Scottish Ministers;
- (b) the Welsh Ministers; and
- (c) the Northern Ireland department,

to that modification.

(4) A consignment of specified retail goods which is in Great Britain may only be moved into Northern Ireland under the Scheme if the terms and conditions of the Scheme are complied with in respect of that consignment.

(5) A person must not move a consignment of specified retail goods from Great Britain into Northern Ireland under the Scheme unless that person—

- (a) has been approved, in accordance with regulation 4, as a person who may—
 - (i) move specified retail goods into Northern Ireland under the Scheme; and
 - (ii) place those goods on the market in Northern Ireland for the final consumer; and
- (b) is complying with the terms and conditions of the Scheme in relation to the movement of the specified retail goods into Northern Ireland.

(6) A person wishing to move specified retail goods into Northern Ireland under the Scheme must make an application to the Secretary of State in writing specifying—

- (a) where the applicant is a food business operator, their food business operator number as registered with the authority responsible for registering the operator;
- (b) where the applicant is not a food business operator, the nature of their business;
- (c) the nature of the specified retail goods which the person wishes to move into Northern Ireland, including information about any relevant potential risk relating to those goods;
- (d) the name and address of any establishment in Great Britain from which those goods are to be moved; and
- (e) the name and address of any establishment in Northern Ireland to which those goods are to be moved immediately on leaving Great Britain.

Approval to move specified retail goods into Northern Ireland

4. Where the Secretary of State is satisfied that there would be no relevant potential risk if the specified retail goods referred to in regulation 3(6)(c) were moved into Northern Ireland by the applicant, the Secretary of State must approve the applicant as a person who may move such goods into Northern Ireland under the Scheme.

Refusal of application

5. Where the Secretary of State is satisfied that there would be a relevant potential risk if—

- (a) the specified retail goods referred to in regulation 3(6)(c) were moved into Northern Ireland; or
- (b) the applicant were permitted to move specified retail goods into Northern Ireland under the Scheme,

the Secretary of State may refuse to approve the applicant as a person who may move such goods into Northern Ireland under the Scheme.

Suspension of approval to move goods under the Scheme

6.—(1) Where the Secretary of State has reason to believe, or suspects, that—

- (a) a person who has been approved to move specified retail goods under the Scheme is not complying with the terms and conditions of the Scheme in relation to the movement of those retail goods into Northern Ireland; or
- (b) there is a relevant potential risk relating to the movement of the specified retail goods into Northern Ireland by that person,

the Secretary of State may suspend that person's approval to move such goods into Northern Ireland under the Scheme.

(2) A suspension imposed under paragraph (1) ceases to have effect if the Secretary of State is satisfied that the circumstances in paragraph (1) do not, or no longer, apply.

Cessation of approval to move goods under the Scheme

7. Where the Secretary of State is satisfied that—

- (a) a person who has been approved to move specified retail goods under the Scheme is failing to comply, or has failed to comply, with the terms and conditions of the Scheme in relation to the movement of the specified retail goods into Northern Ireland; or
- (b) there is a relevant potential risk arising from the specified retail goods which have been, or are to be, moved into Northern Ireland by that person,

the Secretary of State may decide that that person may no longer be approved to move such goods into Northern Ireland under the Scheme.

Listed establishments

8.—(1) A person who has been approved to move specified retail goods under the Scheme may at any time apply in writing to the Secretary of State—

- (a) to add an establishment as a listed establishment; or
- (b) to remove an establishment as a listed establishment.

(2) Where the Secretary of State is satisfied that there is a relevant potential risk arising from the specified retail goods which have been, or are to be, moved into Northern Ireland, the Secretary of State may decide that any establishment specified by any person under regulation 3(6)(d) and (e) or under paragraph (1)(a) is no longer to be a listed establishment.

Reviews and appeals

9.—(1) An applicant may request the Secretary of State in writing to review a decision—

- (a) made under regulation 5; or
- (b) not to add an establishment in relation to an application made under regulation 8(1)(a),

within the period of 10 working days starting on the day after the day on which the applicant is notified of that decision.

(2) A person—

- (a) whose approval to move specified retail goods into Northern Ireland under the Scheme—
 - (i) has been suspended by virtue of a decision under regulation 6(1); or
 - (ii) has ceased by virtue of a decision under regulation 7; or
- (b) in respect of whom a decision has been made that an establishment is no longer to be a listed establishment by virtue of regulation 8(2),

may request the Secretary of State in writing to review that decision within the period of 10 working days starting on the day after the day on which the person is notified of that decision.

(3) If the person requesting a review under paragraph (1) or (2) is dissatisfied with the decision made on that review, that person may appeal to the First-tier Tribunal.

(4) An appeal under paragraph (3) must be made within the period of 30 working days starting on the day after the day on which the person is notified of the decision made on the review under paragraph (1) or (2).

(5) On deciding an appeal under paragraph (3), the First-tier Tribunal may—

- (a) confirm the decision of the Secretary of State; or
- (b) determine that that decision is to cease to have effect.

(6) In this regulation, “working day” means any day other than—

- (a) a Saturday or Sunday;
- (b) a day which is a bank holiday under the Banking and Financial Dealings Act 1971^(a) in England and Wales, Scotland or Northern Ireland; or
- (c) a day which is a public holiday in England, Wales, Scotland or Northern Ireland.

PART 3

CHECKS ON MOVEMENT OF SPECIFIED RETAIL GOODS INTO NORTHERN IRELAND

Interpretation

10. In this Part—

“documentary check” means a check to confirm that the consignment is accompanied by the correct documentation, attestation or certification;

“identity check” means a visual inspection of a consignment to verify that the content and the labelling of the consignment, seals and means of transport, correspond to the information provided in the official certificates and other documents accompanying the consignment;

“the Northern Ireland competent authority” means—

- (a) the Northern Ireland department; or
- (b) any organisation or body designated by that Department to carry out the checks specified in this Part;

“physical check” means a check on goods and, as appropriate, checks on packaging, the means of transport, labelling and temperature, the sampling for analysis, testing or diagnosis and any other check necessary to verify the nature and extent of any relevant potential risk.

Assessment of relevant potential risk

11.—(1) The Northern Ireland competent authority must undertake an assessment of the relevant potential risk of each consignment of specified retail goods which are to be moved into Northern Ireland under the Scheme.

(2) In undertaking the assessment referred to in paragraph (1), the Northern Ireland competent authority must consider—

- (a) any disease outbreaks, pests and other factors which could impact biosecurity, having regard to risks to human, animal or plant health;
- (b) the availability of appropriate facilities at points of entry designated for the purposes of regulation 15 to carry out checks on goods moving into Northern Ireland under the Scheme;
- (c) the risk that the goods may be moved subsequently for sale or use outside the United Kingdom;

(a) 1971 c. 80.

- (d) the ability of the authority to prioritise the checks to be carried out on categories of goods regarded to be of a higher risk;
- (e) the availability of sufficient suitably qualified staff to carry out the checks; and
- (f) the availability of sufficient premises and facilities appropriate to the nature and volume of the categories of goods moving into Northern Ireland under the Scheme which are necessary in order to carry out the checks.

Documentary checks

12. The Northern Ireland competent authority must carry out a documentary check on each and every consignment of specified retail goods moving into Northern Ireland under the Scheme.

Identity checks

13.—(1) The Northern Ireland competent authority must, notwithstanding paragraph (2), check that the number on the seal on each consignment of specified retail goods moving into Northern Ireland under the Scheme corresponds with the number on the seal on the consignment at the point when the consignment left Great Britain.

(2) From the date specified in the first column of the table below, the Northern Ireland competent authority must carry out an identity check by breaking the seal on at least the percentage of consignments of specified retail goods moving into Northern Ireland under the Scheme specified in relation to that date in the second column of that table.

<i>Date from which identity checks are to be carried out on consignments</i>	<i>Minimum percentage of consignments on which identity checks must be carried out</i>
1st October 2023	10
1st October 2024	8
1st July 2025	5

(3) Any consignment in respect of which a seal is broken by virtue of paragraph (2) must be resealed by the Northern Ireland competent authority after the check is carried out.

(4) The seal on the consignment which is resealed by virtue of paragraph (3) must be given a new seal number.

Physical checks

14. The Northern Ireland competent authority must carry out a physical check on any consignment of specified retail goods in any case where the authority considers that there may be a relevant potential risk relating to the consignment.

Location of checks

15.—(1) The Northern Ireland competent authority may carry out the checks specified in regulation 12 on a consignment of specified retail goods—

- (a) at a point of entry into Northern Ireland which is an SPS Inspection Facility; or
- (b) by examining electronically any documentation, attestation or certification relating to the consignment.

(2) The Northern Ireland competent authority must carry out the checks specified in regulation 13(1) on a consignment of specified retail goods in accordance with the requirements relating to such checks in the SPS Regulation.

(3) The Northern Ireland competent authority must carry out the checks specified in regulation 13(2) on a consignment of specified retail goods at a point of entry into Northern Ireland which is an SPS Inspection Facility.

(4) The Northern Ireland competent authority may carry out the checks specified in regulation 14 on a consignment of specified retail goods—

- (a) at a point of entry into Northern Ireland which is an SPS Inspection Facility; or
- (b) at any establishment where goods moved under the Scheme are sold.

Stopping vehicles at points of entry

16.—(1) The Northern Ireland competent authority may, at any point of entry into Northern Ireland referred to in regulation 15, stop any vehicle for the purposes of—

- (a) undertaking the checks referred to in this Part; or
- (b) ensuring compliance with the terms and conditions of the Scheme.

(2) Where—

- (a) the Northern Ireland competent authority stops a vehicle under paragraph (1); or
- (b) following a check on the specified retail goods transported by that vehicle at that point of entry, considers that there is a relevant potential risk arising from those goods,

the Northern Ireland competent authority may prevent that vehicle from entering Northern Ireland.

On-market checks at establishments of food business operators in Northern Ireland

17.—(1) The Northern Ireland competent authority may, in any case where the authority considers such a check to be appropriate, carry out checks at any establishment of a food business operator in Northern Ireland for the purpose of checking that specified retail goods moved under the Scheme are intended solely for retail sale in Northern Ireland.

(2) The checks referred to in paragraph (1) include, but are not limited to—

- (a) checking that the consignment complies with the marking requirements in Article 6 of the SPS Regulation;
- (b) reviewing all records relating to the general certificate accompanying the goods;
- (c) reviewing all sales records relating to the goods; and
- (d) reviewing records relating to the entry of the goods into the establishment in question.

PART 4

RIGHTS OF ENTRY AND OF SEIZURE

Interpretation

18. For the purposes of this Part, “the appropriate GB authority” is—

- (a) where the establishment is in England, the Secretary of State;
- (b) where the establishment is in Scotland, the Scottish Ministers;
- (c) where the establishment is in Wales, the Welsh Ministers.

Rights of entry

19.—(1) For the purposes of Part 2, a person duly authorised in writing by the appropriate GB authority may at any reasonable time enter any establishment for the purposes of determining whether—

- (a) a person is complying with the terms and conditions of the Scheme; or
- (b) there is a relevant potential risk in relation to any consignment of specified retail goods.

(2) For the purposes of undertaking a check referred to in regulation 15(4)(b) or 17, a person duly authorised in writing by the Northern Ireland competent authority may at any reasonable time enter any establishment.

(3) A person entitled to enter an establishment under paragraph (1) or (2) must, if requested to do so, produce a document showing that person's authority.

Seizure and disposal of goods etc.

20.—(1) Paragraph (2) applies where—

- (a) a person authorised by the Northern Ireland competent authority prevents a vehicle from entering Northern Ireland by virtue of regulation 16(2);
- (b) a person enters an establishment by virtue of regulation 19.

(2) Where this paragraph applies, the person may do anything necessary in order to mitigate any relevant potential risk arising from the specified retail goods in question.

(3) The action that may be taken under paragraph (2) includes but is not limited to—

- (a) seizing the specified retail goods found giving rise to that risk;
- (b) re-exporting or re-dispatching the specified retail goods giving rise to that risk; or
- (c) destroying or otherwise disposing of the specified retail goods found giving rise to that risk in whatever way the authority considers appropriate.

(4) The power under paragraph (3)(a) includes power to retain anything seized in exercise of the power for so long as it may be required for the purpose for which it was seized.

(5) Where by virtue of paragraph (3)(a) a person (P) seizes any goods, P must leave with the driver of the vehicle or, as the case may be, an appropriate person at the establishment from which the goods were seized, a statement giving particulars of what P has seized and stating that P has seized it.

(6) Any costs incurred in relation to any action taken in respect of any specified retail goods under this regulation are recoverable from the person approved under regulation 4 to move those goods into Northern Ireland under the Scheme.

Signed by authority of the Secretary of State for Environment, Food and Rural Affairs

Mark Spencer
Minister of State

At 11.55 a.m. on 8th August 2023

Department for the Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations establish the Retail Movement Scheme. This Scheme implements the Windsor Framework^(a) and is intended to regulate the movement of certain consignments of retail goods from Great Britain into Northern Ireland and what checks are to be made in respect of those goods.

Part 2 prescribes how a person may apply to the Secretary of State for approval to move goods to which the Scheme applies into Northern Ireland. It also makes provision enabling persons to add or remove listed establishments and also prescribes processes for reviews and appeals where a person's application has been refused, where their approval to move goods has been suspended or cancelled or their approval to list an establishment has been refused.

Part 3 prescribes the nature and extent of checks which are to be made on those retail goods moving from Great Britain to Northern Ireland under the Scheme and prescribes when those checks are to be made. It also prescribes when those checks may be made where authorities have a discretion to conduct those checks. It also prescribes the locations where those checks are to be made.

(a) https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ%3AL%3A2023%3A102%3ATOC&uri=uriserv%3AOJ.L_.2023.102.01.0087.01.ENG.

Part 4 makes provision about rights of entry both to enforce the Regulations and to make checks. It also makes provision about seizure, re-export and destruction of goods posing a relevant potential risk.

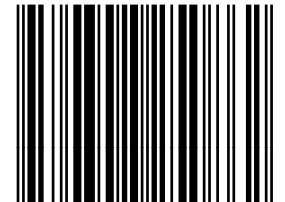
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£6.90

<http://www.legislation.gov.uk/id/uksi/2023/896>

ISBN 978-0-34-825086-2



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