

EXPLANATORY MEMORANDUM TO
THE WINDSOR FRAMEWORK (PLANT HEALTH) REGULATIONS 2023
2023 No. 957

1. Introduction

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

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to ease trade between Great Britain (“GB”) and Northern Ireland (“NI”) in a way that protects the biosecurity of the island of Ireland, following the agreement of the Windsor Framework. Prior to this agreement, plants for planting (including seeds) and vehicles and machinery which have been operated for agricultural or forestry purposes could be moved only with full third country certification including individual phytosanitary certificates costing up to £150 each time. Seed potatoes were completely prohibited from entering NI.
- 2.2 This instrument gives effect to the new processes agreed under the Windsor Framework, changing the way in which plants for planting, seed potatoes and other objects (vehicles and machinery which have been operated for agricultural or forestry purposes) may move from GB to NI, restoring the smooth flow of trade within the internal market of the United Kingdom and safeguarding NI’s place in the United Kingdom. It implements the elements of the Windsor Framework related to the movement of those goods from GB to NI, enabling the removal of a prohibition on seed potatoes entering NI, facilitating the movement of plants for planting including previously prohibited high risk plants, and removal of a requirement for a phytosanitary certificate – replacing this with a Northern Ireland plant health label (“NI PH label”).
- 2.3 This instrument includes requirements which closely reflect the existing regime and requirements in relation to UK plant passports for the movement within GB of specified plants, plant products and other objects under Regulation 2016/2031 on protective measures against pests of plants (“Plant Health Regulation”). It also amends the Plant Health (Official Controls and Miscellaneous Provisions) Regulations (Northern Ireland) 2020 (S.R. 2020 No 293) to ensure that seed potatoes which have entered Northern Ireland with a NI PH label may be planted in NI.

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 extent of this instrument (that is, the jurisdiction(s) of which the instrument forms part of the law) is as follows. Part 1 extends to the United Kingdom. Parts 2 and 3 extend to Scotland, England and Wales. Part 4 extends to Northern Ireland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is as follows. Part 1 applies to the United Kingdom. Parts 2 and 3 apply to Scotland, England and Wales. Part 4 applies to Northern Ireland.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 EU Regulations, such as Regulation (EU) 2016/2031, were incorporated into domestic law under the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”), with the relevant legislation applying to Northern Ireland in accordance with the original Protocol on Ireland/Northern Ireland in the EU withdrawal agreement (“the original Protocol”). As a result of the original Protocol, different sanitary and phytosanitary (“SPS”) requirements have applied in GB and NI from the beginning of 2021.

6.2 Section 8C of the Withdrawal Act (as amended by the European Union (Withdrawal Agreement) Act 2020), provides a power “in connection with Ireland/Northern Ireland Protocol in the 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 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”.

6.3 The Windsor Framework is an international agreement between the UK and the EU.

6.4 In order to implement the Windsor Framework, the EU has adopted the 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, machinery and certain vehicles operated for agricultural or forestry purposes, as well as non-commercial movements of certain pet animals into Northern Ireland (“the EU SPS Regulation”). The EU SPS Regulation sets out new arrangements for the movement from Great Britain to Northern Ireland of plants for planting, seed potatoes and machinery and vehicles which have been operated for agricultural or forestry purposes.

6.5 The Windsor Framework (Enforcement etc.) Regulations 2023 No. XXX will provide for the enforcement of provisions contained in this instrument.

7. Policy background

What is being done and why?

7.1 The purpose of this instrument is to ease trade between GB and NI in a way that protects the biosecurity of the island of Ireland, following the agreement of the Windsor Framework.

7.2 This instrument provides for the establishment of a NI PH label regime for plants for planting, seed potatoes and vehicles and machinery which have been operated for agricultural or forestry purposes, for their movement from GB to NI. Requirements relating to the issue of the NI PH label and the subsequent dispatch to Northern Ireland of the plants and other objects concerned are laid down in this instrument to

enable the relevant goods to move to NI with a NI PH label under the new arrangements, replacing previous certification requirements.

- 7.3 To be eligible to issue NI PH labels and dispatch plants and other objects with a NI PH label to NI, professional operators in GB will need to be registered and authorised by the competent authority. This reflects requirements under the existing UK plant passport regime. Professional operators can be authorised to issue NI PH labels for plants for planting and vehicles and machinery which have been operated for agricultural or forestry purposes. For the movement of seed potatoes, professional operators can become authorised to receive and use NI PH labels issued by the competent authority, following the carrying out of official inspections to determine compliance with requirements of the Windsor Framework. This reflects the existing Seed Potato Certification Scheme (SPCS) where labels are issued to relevant operators by the competent authority.
- 7.4 Provision is also made for the issue of replacement NI PH labels in certain circumstances, including for seed potatoes, by competent authorities to professional operators who have been authorised for that purpose.
- 7.5 As is the case in respect of UK plant passports under the Plant Health Regulation, obligations are imposed in this instrument on professional operators to ensure traceability of the plants and other objects for which a NI PH label has been issued, and provision is made for competent authorities to verify compliance with the requirements of the new regime. The instrument requires action to be taken by professional operators and competent authorities in cases of non-compliance.
- 7.6 The amendments made to the Plant Health (Official Controls and Miscellaneous Provisions) Regulations (Northern Ireland) 2020 (S.R. 2020 No. 293) will ensure that seed potatoes that have entered NI from GB using a NI PH label may be planted in NI.

Explanations

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

- 7.7 Previously, under the original Protocol, the relevant plant health legislation in NI required these goods moving from GB to NI to meet relevant EU phytosanitary requirements. This included the requirement for an official signed, £150 per movement, phytosanitary certificate (with associated requirements) as well as the prohibition of GB seed potatoes moving into NI.

Why is it being changed?

- 7.8 Under the Windsor Framework, plants for planting will be able to move in a similar way as under the existing UK-wide plant passport scheme, in line with traders throughout the UK, without the need to use phytosanitary certificates. Changes to UK legislation are needed in order to facilitate such movements.

What will it now do?

- 7.9 Under the Windsor Framework, a phytosanitary certificate will no longer be required for plants for planting and machinery and vehicles which have been operated for agricultural or forestry purposes that are moving with a NI PH label and staying within the UK internal market. The prohibition on the movement of GB seed potatoes to NI will also be lifted, allowing them to move with a NI PH label. Consignments will have to be dispatched by professional operators registered and authorised by UK

competent authorities. The NIPHL can be printed by operators themselves, and in the case of plants for planting and used machinery and vehicles, this can be done without any form of competent authority sign-off beforehand.

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 in the European Union (Withdrawal) Act 2018.
- 8.2 This instrument relates to the implementation of the Windsor Framework, as agreed between the UK and the EU on 27 February 2023.

9. Consolidation

- 9.1 Not applicable to this instrument.

10. Consultation outcome

- 10.1 The UK Government has considered and reflected engagement with interested stakeholders, including organisations moving goods between GB and NI, in drafting these Regulations.
- 10.2 This instrument concerns SPS matters, which is a devolved matter in the United Kingdom. Therefore, Defra has developed this instrument with the Scottish Government, Welsh Government and Northern Ireland Civil Service and obtained the relevant legislative consent as per the commitment made by the UK Government during the passage of the European Union (Withdrawal) Act 2018. In the absence of a functioning Northern Ireland Executive, this instrument has been noted by the Department of Agriculture, Environment and Rural Affairs and Department of Health in Northern Ireland.

11. Guidance

- 11.1 Defra has, and continues to, publish guidance for new arrangements to be delivered as a result of the Windsor Framework. This can be found here: <https://www.gov.uk/government/collections/the-windsor-framework-further-detail-and-publications>.

12. Impact

- 12.1 There is no significant impact on charities or voluntary bodies. This instrument aims to ease movement of goods (certain plants and other objects (vehicles and machinery which have been operated for agricultural or forestry purposes)) between GB and NI, and therefore promote prosperous trade within the UK.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment for this instrument has not been completed because the annual costs to businesses from this instrument are below the de minimis threshold.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 This instrument applies equally to all businesses, including small businesses.

14. Monitoring & review

- 14.1 No specific monitoring arrangements are needed.
- 14.2 As this instrument is made under the Withdrawal Act, no review clause is required.

15. Contact

- 15.1 Suzie Pearce at the Department for Environment, Food and Rural Affairs, telephone: 07557 486012 or email: suzannah.pearce@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Alexandra McKenzie, Deputy Director for Northern Ireland Policy, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Benyon, Minister of State at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.