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30 November 2023

Dear Finlay,

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

EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to proposals by the Scottish Ministers to consent to the making of UK secondary legislation affecting devolved areas arising from EU Exit.

That protocol, as agreed between the Scottish Government and the Parliament, accompanied the letter from the then Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 4 November 2020 and replaced the previous protocol that was put in place in 2018.

The Scottish Government has significant interests at stake in the ongoing implementation of the NI Protocol/Windsor Framework – it is in all of our interests that it is operationalised effectively, and we are continuing to engage closely with the UK Government on this. We are therefore proceeding on this basis and we are notifying the Scottish Parliament now of our intention to consent to these instruments.

I attach a Type 1 notification which sets out the details of the SI which the UK Government proposes to make and the reasons why I am content that Scottish devolved matters are to be included in this SI.

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Please note, we are yet to have sight of the final SI and it is not available in the public domain at this stage. I anticipate that the SI will be laid as soon as the 4th December, however the UK Government has not yet confirmed this. I note that officials have asked Cabinet Office not to agree to debate the SI until the Parliament has had a chance to consider the notification.

We will, in accordance with normal procedure, advise you when the final SI is laid and as to whether the final SI is in keeping with the terms of this notification.

I will confirm the date by which I will require a response when I advise you that the final SI has been laid, however as the UK Government needs the SI to be in force by the end of January, I unfortunately anticipate a very limited time for the Parliament to consider the matter.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

Yours sincerely,



MAIRI GOUGEON

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NOTIFICATION TO THE SCOTTISH PARLIAMENT

Name of the SI(s) (if known) or a title describing the policy area

Statutory Instrument: Amendment to The Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020

Is the notification Type 1 or Type 2?

Type 1

A brief overview of the SI:

When the SI comes into force it will amend the definition of Qualifying Northern Ireland Goods (QNIGs). This is a term used in a number of pieces of legislation relating to the movement of goods within the UK. At present, QNIGS are broadly defined as any good present in NI and not subject to any customs supervision, restriction or control by the [Definition of Qualifying Northern Ireland Goods \(EU Exit\) Regulations 2020](#) (“the 2020 Regulations”).

The definition of a QNIG will be narrowed for food and feed purposes, reserving QNIG status for food and feed goods dispatched from an NI registered or approved food and feed business and removing QNIG status from any good moved into Northern Ireland from outside the United Kingdom with the purpose of the good having QNIG status on movement into Great Britain

These regulations are being made under powers in section 8C(6) of the European Union (Withdrawal) Act 2018 (EUWA) and will have effect across the UK.

This instrument is not relevant to the Scottish Government’s policy to maintain alignment with the EU because it gives effect to aspects of the Windsor Framework agreement between the UK and the EU on the operation of the Northern Ireland Protocol (NIP) and relates to movements of goods within the UK internal market.

The SI is subject to the affirmative procedure and is to be laid on or around 4 December and is expected to come into force on 31 January 2024.

Summary of the proposals

Background:

- The UK Internal Market Act (UKIMA) sought to ensure unfettered access for goods moving from Northern Ireland to other parts of the UK so that goods can be freely placed on the market throughout Great Britain (GB).
- Unfettered access only applies to QNIGs.
- The market access principles in Part 1 of UKIMA apply to sales of QNIGs in Great Britain but not to other goods transported from Northern Ireland.

- Controls over the movement of food into Scotland (including from NI) for the purposes of protecting human, animal or plant health, animal welfare or the environment or observing or implementing obligations under the Common Agricultural Policy are devolved. Controls over the movement of feed into Scotland for the purposes of protecting human, animal or plant health or the environment are also devolved.

The proposals:

- Changes are being made to the current definition of QNIGs in order to implement the NIP as it is adjusted by the Windsor Framework.
- The proposals would amend the definition of QNIGs, principally to enable food and feed to be traceable to a registered Northern Irish business and to limit potential avoidance of checks on goods arriving into GB. The definitions of QNIGs will be amended as follows.
- Food and feed will no longer be a QNIG for the purpose of:
 - the market access principles in Part 1 of UKIMA unless it has been dispatched by an approved NI business.
 - unfettered market access in relation to certain checks, controls, and processes under section 47 of UKIMA unless it has been dispatched by an approved NI business or not part of a commercial consignment (such as personal luggage).
- Other goods will not be QNIGs if they are moved into the NI from outside the UK and the only purpose of the movement is an attempt to gain QNIG status (including those transported through Ireland)

A separate instrument, *The Movement of Goods (Northern Ireland to Great Britain) (Animals, Feed and Food, Plant Health etc.) Regulations 2024* will apply the existing system of SPS regulatory checks and controls to non-qualifying goods moving NI to GB. Competent Authorities will have legal functions to perform SPS checks and controls on these goods. This is required because existing legislation (for example, Official Controls Regulation) does not apply SPS checks and controls on non-QNIG goods moving from NI to GB.

Does the SI relate to a common framework or other scheme?

The SI does not relate to a common framework or other scheme.

Summary of stakeholder engagement/consultation

The UK led a consultation on the Border Target Operating Model earlier this year. This included engagement with interested stakeholders, including organisations moving goods between GB and NI and was endorsed by Scottish Ministers. It will be implemented by the Scottish Government.

A note of other impact assessments, (if available)

The UK Government has not provided an impact assessment.

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

Scottish Ministers reasons for consenting to the proposals are as follows:

- The NIP is required as a direct result of EU Exit and the Windsor Framework as agreed by the UK and EU in February 2023.
- The intention of the policy is to allow Scottish Ministers to determine appropriate controls that will help protect Scotland's biosecurity.
- The SI takes into account devolved competence and will not confer new or amend existing powers of either UK or Scottish Ministers.
- This a complex area with a mix of devolved and reserved competence:
 - The implementation of international agreements, such as the NIP, in devolved areas is an exclusion to the foreign affairs reservation set out at paragraph 7 of schedule 5 of the Scotland Act 1998
 - Import and export control is reserved by Head C5 of Schedule 5 of the Scotland Act 1998, however controls over the movement of food and feed into and out of Scotland (including from NI) are devolved.
 - The Scottish Ministers have a bespoke power in 11M in schedule 2 of EUWA to make provision for market access of NI goods in Scotland.
 - Section 8C(6) of EUWA confers a power on UK Ministers to define QNIGs for the purposes of that Act (this power is not conferred on The Scottish Ministers).

Intended laying date (if known) of instruments likely to arise

On or around the 4 December 2023

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?

The planned for laying date does not give the Parliament 28 days to consider the notification.

A developed draft was only shared with the Scottish Government recently. It is regrettable that on this occasion it has not been possible to comply with the requirement that member should have 28 full days to scrutinise before an Instrument is laid. Officials have asked Cabinet Office not to agree to debate the SI until the Parliament has had a chance to consider the notification.

Information about any time dependency associated with the proposal

A separate but related instrument, *The Movement of Goods (Northern Ireland to Great Britain) (Animals, Feed and Food, Plant Health etc.) Regulations 2024*, has been submitted under the Protocol.

Further related changes will be necessary to implement the UK Government's Border Target Operating Model (BTOM) and may also be taken forward on a UK-wide basis.

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

None

Any significant financial implications?

No significant financial implications.

SI NOTIFICATION: SUMMARY

Amendment to The Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020
Proposed laying date at Westminster 4 December 2023
Date by which Committee has been asked to respond To be confirmed once the UK Government has advised on the laying date and potential debates.
Power(s) under which SI is to be made This statutory instrument (SI) will amend the definition of Qualifying Northern Ireland Goods (QNIGs) in the Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020 (“the 2020 Regulations”). These regulations are being made under powers in section 8C(6) of the European Union (Withdrawal) Action 2018 (EUWA) and will have effect UK wide.
Categorisation under SI Protocol Type 1
Purpose Changes are being made to the current definition of QNIGs in order to implement the NIP.
Other information N/A
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