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Convener, Rural Affairs and Islands Committee

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30 November 2023

Dear Finlay,

DEFRA OFC/09 - THE MOVEMENT OF GOODS (NORTHERN IRELAND TO GREAT BRITAIN) (ANIMALS, FEED AND FOOD, PLANT HEALTH ETC.) REGULATIONS 2024

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 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.

I attach a Type 1 notification which sets out the details of the SI which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in this SI. Please note, we are yet to have sight of the final SI and it is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

The UK Government plans to lay the Instrument on 8 January 2024. An initial draft of the SI has only been shared in recent days and it is therefore regrettable that on this occasion it has not been possible to comply with the requirement that members should have a full 28 days to scrutinise before the instrument is laid.

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

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St Andrew's House, Regent Road, Edinburgh EH1 3DG
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I look forward to hearing from you on 22 December.

Yours sincerely,



MAIRI GOUGEON

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NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Movement of Goods (Northern Ireland to Great Britain) (Animals, Feed and Food, Plant Health etc.) Regulations 2024– (Defra OFC/09)

Is the notification Type 1 or Type 2

Type 1

A brief overview of the SI (including reserved provision).

This SI forms part of the approach to providing unfettered market access (UMA) to qualifying Northern Ireland goods (QNIGs) entering the Great Britain (GB) market. UMA means no, or minimal, new checks, controls and administrative processes on the movement of QNIGs to Great Britain, and that QNIGs can be placed on the market in GB, even if these goods comply with European Union (EU) regulatory standards rather than UK regulatory standards.

Currently, QNIGs are broadly defined as any good present in NI and not subject to any customs supervision, restriction or control (The Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020).

From the 31 January 2024, 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 QNIG status will be removed 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. This restriction on what will have the status of a QNIG will be legislated for in a separate Statutory Instrument which is the subject of a separate notification to the Scottish Parliament (Amendment to the Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020). This above refinement to the QNIG definition will result in a higher volume of non-QNIGs entering GB from NI, which can now be subject to checks and controls. To ensure the benefits of UMA are reserved for QNIGs, the Border Target Operating Model, published in August 2023, stated that traders moving non-qualifying goods will be subject to GB's full process for third country customs and SPS checks and controls.

A number of pieces of legislation however currently only make provision for SPS, and certain other, checks and controls to be carried out on goods entering Great Britain from a third country, meaning a country or territory other than Northern Ireland, the Channel Islands or the Isle of Man. This instrument will provide that where goods are moved from a third country through Northern Ireland and into Great Britain, the goods are to be regarded for the purposes of SPS and certain other checks, controls and processes as entering Great Britain from a third country, unless they are QNIGs. There will be a temporary transitional provision in the SI which will

implement the Transitional Staging Period (TSP) arrangements so that they apply to NI to GB movements of non-QNIGs in the same way as they apply to goods moving to Great Britain from territories subject to special transitional import arrangements (primarily EU or EEA member States). The instrument makes provision for devolved matters in that it regulates the movement into Scotland of food, animals, animal products, plants and plant products 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, and of animal feeding stuffs, fertilisers and pesticides for the purposes of protecting human, animal or plant health or the environment.

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU because it deals with matters arising out of the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement.

The SI is made in exercise of powers conferred by section 8C(1) of, and paragraph 21(a) of Schedule 7 to, the European Union (Withdrawal) Act 2018 and will ensure that the existing regime of SPS and certain other regulatory checks, controls and administrative process apply to non-QNIGs moving from NI to GB.

The proposed instrument is expected to be laid before the UK Parliament on 8 January 2024 and to come into force on 31 January 2024

Details of the provisions that Scottish Ministers are being asked to consent to.

The SI will make the following provisions:

- It 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 and certain other checks and controls on these goods. This is required because existing legislation (for example, Official Controls Regulation) does not apply SPS and certain other checks and controls on non-QNIG goods moving from NI to GB;
- At the same time, we want to ensure that the treatment of non-qualifying goods moving NI to GB is aligned with the TSP that applies to movements of goods from territories subject to special transitional import arrangements (primarily EU or EEA member States) to GB, so as not to treat non-QNIGs more onerously than these goods moving to GB. As the transitional provisions lift and eventually fall away, non-QNIGs will be subject to the standard controls in the same way as other goods entering GB.

The overall intention is therefore to fill any gap in SPS and certain other checks that might otherwise arise, so that non-QNIGs are subject to the appropriate controls and that they are not treated more onerously than goods coming from the EEA.

In so far as the provisions extend to Scotland, the provisions relate to devolved matters, and the consent of the Scottish Ministers is sought for their inclusion in the instrument.

Summary of the proposals

The provisions of the SI will apply to goods subject to legislation which relates to the health, welfare or conservation of animals; the protection of human health arising from animals and animal products; food, including food ethics and food safety; feed, including feed safety; plants, plant products and other objects; and plant protection products.

The SI will provide that when those goods are moved from a third country into NI and then from NI into GB they are to be regarded as having moved from a third country into GB for the purposes of checks, controls and processes under such legislation.

This will not apply to goods that are QNIGs or veterinary medicinal products which enter Great Britain from Northern Ireland. This SI will provide that the checks on non-qualifying Northern Ireland goods moving from NI to GB will be aligned with the Transitional Staging Period (TSP), ensuring that non-QNIGs will be subject to the same standard controls in the same way as other goods entering Great Britain from states subject to special transitional import arrangements (EEA and EU member states).

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

Provisional Plant Health Framework

Animal Health and Welfare Framework

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.

A note of other impact assessments, (if available)

The UK Government have advised that there is no, or no significant, impact on private, voluntary or public sector is foreseen.

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

The SI takes account of devolved competence. The SI provides that the existing regime of regulatory checks, controls and administrative processes that help prevent the spread of animal and plant diseases, uphold the humane treatment and

conservation of animals, preserve standards of food and feed safety and ethics, apply to goods other than QNIGs or veterinary medicinal products which enter Great Britain from Northern Ireland. This SI is considered appropriate in order to ensure alignment across Great Britain and maintain and protect biosecurity.

Therefore, the Scottish Ministers consider that consenting to this SI is acceptable.

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

OFC/09 will be made using the negative procedure and is to be laid on 8 January 2024 to come into force on 31 January 2024.

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 the Scottish Parliament should have 28 full days to scrutinise before an Instrument is laid.

Information about any time dependency associated with the proposal

Not applicable

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

<p>The Movement of Goods (Northern Ireland to Great Britain) (Animals, Feed and Food, Plant Health etc.) Regulations 2024 – “Defra – OFC/09”</p>
<p>Proposed laying date at Westminster</p> <p>8 January 2024</p>
<p>Date by which Committee has been asked to respond</p> <p>22 December 2023</p>
<p>Power(s) under which SI is to be made</p> <p>The SI is made in exercise of powers conferred by section 8C(1) of, and paragraph 21(a) of Schedule 7 to, the European Union (Withdrawal) Act 2018</p>
<p>Categorisation under SI Protocol</p> <p>Type 1</p>
<p>Purpose</p> <p>The SI will provide that when those goods are moved from a third country into NI and then from NI into GB they are to be regarded as having moved from a third country into GB for the purposes of checks, controls and processes under certain legislation.</p>
<p>Other information</p> <p>N/A</p>
<p>SG Policy contact:</p> <p>Ian Cox, Agriculture and Rural Economy Directorate, Animal Health and Welfare Division ian.cox@gov.scot</p>