

Submissions on the Windsor Framework (Retail Movement Scheme: Plant and Animal Health) (Amendment etc.) Regulations 2024 (SI 2024/853)

Submission from Jim Allister KC MP (Traditional Unionist Voice)

I write to express serious concerns about the Windsor Framework (Retail Movement Scheme: Plant and Animal Health) (Amendment etc.) Regulations 2024 which were laid on 9 August.

I set out my concerns on the basis of your terms of reference, making particular reference to grounds, 4 a, c and d.

(4) The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are—

(a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;

The Windsor Framework (Retail Movement Scheme: Plant and Animal Health) Regulations 2024 are politically and legally important and are likely to be of interest to the House because of their constitutional and other implications.

In the first instance, it has been widely reported that one of the European Union's strategies post Brexit has been to constrain the freedom of the United Kingdom as a whole to access the opportunities (for good or ill) to set its own standards and laws on leaving the EU, by using the leverage it obtains from the fact that (notwithstanding the freedom afforded through Article 50 of the Treaty of the European Union, and the 2016 referendum), while the whole of the UK has left the EU in the sense that no part of the UK remains a member, part of the UK remains part of the EU single market and subject to EU law in some 300 areas (such that the legislature of that part of the United Kingdom remains the EU legislature for those purposes), creating a consequent pressure for the rest of the UK not to diverge from those laws, so that the integrity of UK can survive. These Regulations directly validate this concern in that they involve imposing on England, Wales and Scotland, EU standards so that these parts of the UK can be aligned with Northern Ireland in order that Rest of the World products that come to England, Wales or Scotland can move freely to Northern Ireland.

In the second instance, however, the benefit extracted from volunteering to re-submit to EU rules, does not remove the border in the Irish Sea. One might expect that if England, Wales and Scotland were to give up the freedoms associated with Brexit in regard to determining our own standards in relation to Plant and Animal Health, that the Border in the Irish Sea would to that extent be removed but these Regulations make it clear that nothing could be further from the truth. The Rest of the World products that these Regulations propose should only be able to enter England, Wales and Scotland if these parts of the UK submit to EU standards cannot then move freely to Northern Ireland. They still have to negotiate the international trade border the EU has imposed in the Irish Sea. Unlike movements of those Rest of the World goods within and between England, Wales and Scotland that can move freely,

these goods can only move to Northern Ireland on the Green Lane (UK Internal Market System) which means they must: i) be moved by an approved 'trusted trader' who has to go through an application process and maintain their standing in this regard, ii) have an export number, iii) negotiate the international SPS and Customs border with appropriate certification and be iv) subject to 100% documentary checks, and 5 to 10% identity checks and physical checks on an intelligence led basis, for which purpose Border Control Posts are currently under construction. While the paperwork is simplified on the Green Lane (UK Internal Market System), the Border is not removed which is why customs and international SPS requirements are simplified rather than removed.

In the third instance, as the explanatory memorandum on these Regulations makes plain, their purpose is to access the alternative border experience that is offered by Regulation (EU) 2023/1231.

5.2. Article 9 of Regulation (EU) 2023/1231 ("the SPS Regulation") provides a route for non-EU rest-of-world retail goods to become eligible to use NIRMS to move from GB into NI. This is subject to aligning with the import requirements and official controls for those goods as applies in NI, and being added to the list of rest-of-world goods authorised to move under NIRMS.

https://www.legislation.gov.uk/ukSI/2024/853/pdfs/ukSIEM_20240853_en_001.pdf

The full title of Regulation (EU) 2023/1231 is:

'Regulation (EU) 2023/1231 of the European Parliament and of the Council of 14 June 2023 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 (Text with EEA relevance).'

The interdependent relationship between the Windsor Framework (Retail Movement Scheme: Plant and Animal Health) (Amendment etc.) Regulations 2024 and Regulation (EU) 2023/1231 make the former deeply controversial because they arise out of an effort to access certain 'benefits' that result from the European Union making legislation that rather than governing the EU governs a state that is not a member of the European Union and what can happen within that state in terms of movements from one part of it to another. It makes provisions for the division of the country into two and thereby involves the EU and its member states violating one of the ground rules of international relation indisrespecting the territorial integrity of the UK. Moreover, while Regulation (EU) 2023/1231 offers to make the burdens attending the division of the country less burdensome (a benefit that the Windsor Framework (Retail Movement Scheme: Plant and Animal Health) (Amendment etc.) Regulations 2024 seeks to exploit) Article 14 of the said Regulation 2023/1231 makes it plain that these are enjoyed subject to the EU being content that certain demands it makes are satisfied, such that if they are not with respect to any aspect of the running the Green Lane border experience (which might have nothing to do with those aspects of it pertaining to the Windsor Framework (Retail Movement Scheme: Plant and Animal Health) (Amendment etc.) Regulations 2024), they can pull the Green Lane, such that the default position falls back to the much more inconvenient and

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expensive basic Red Lane border experience. In this context the ability of the Windsor Framework (Retail Movement Scheme: Plant and Animal Health) (Amendment etc.) Regulations 2024 to enable certain Rest of the World products to cross and international trade border at less expense and inconvenience than would otherwise exist, depends not ultimately on the will of Parliament expressed through these Regulations but on the will the EU.

What makes these regulations so controversial is the existence of another way of managing the border between the UK and ROI that: i) involves treating UK citizens in Northern Ireland with respect and ii) not taking from UK citizens in England, Wales and Scotland, the opportunity to pursue the opportunities of Brexit. In a world where there are two ways of managing the border: i) the Irish Sea Border that involves disrespecting 'the territorial integrity of the UK' and the mass disenfranchisement of 1.9 million people in 300 areas of law, or ii) Mutual Enforcement which respects the territorial integrity of the UK and does not disenfranchise anyone, any preference that the EU might have for the former becomes irrelevant unless it wishes to become the author of the biggest and most unenlightened disenfranchisement operation of modern times.

(c) that it may imperfectly achieve its policy objectives;

As demonstrated above, the imposition of EU standards on certain Rest of the World goods coming to England, Wales and Scotland, as the Windsor Framework already imposes on Northern Ireland, does not enable those Rest of the World products to move freely from e.g. England to Northern Ireland, as they can between England, Wales and Scotland. In that sense asking England, Wales and Scotland to surrender the benefits of Brexit in regulating some products, in no way removes the Irish Sea Border in relation to them.

(e) that there appear to be inadequacies in the consultation process which relates to the instrument;

Given the political significance and obvious controversy associated with these regulations, it is quite extraordinary that the Government has excused itself from not conducting a public consultation.

2 September 2024

Submission from Mr Christopher Howarth

I would like to make a brief submission to your Committee regarding the above Regulation that I believe would benefit from scrutiny and the attention of both Houses.

I believe it falls within your terms of reference (3A) as "it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House" and (3C) "that it may imperfectly achieve its policy objectives" and (3D) "that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective".

The Regulation¹ was made on the 8th August under the European Union (Withdrawal) Act 2018(1). This act gives power to “to implement the Protocol on Ireland/Northern Ireland in the withdrawal agreement”.

This Regulation is however not clearly related to implementing the Protocol on Ireland/Northern Ireland as the explanatory memorandum explains: “These Regulations implement the Windsor Framework, in particular Article 9...” Article 9 appears not to be Article 9 of the Protocol but Article 9 of an EU legal Act Regulation (EU) 2023/1231.² This is not immediately evident in the explanatory material attached to the regulation but is vital to understanding the Regulation and raises questions as to its Vires.

Why it is politically important.

This regulation arises from the UK Government’s Windsor Framework relaunch of the Protocol in February 2023 – a politically contentious issue. This regulation provides for the application of EU law on the external UK frontier in a manner that was not explicitly set out at the time. For instance the following non exclusive list of EU law appear to be placed into UK law:

Regulation (EU) 2017/625
Regulation (EU) 2019/2072
Regulation (EU) 2016/2031
Regulation (EU) 2016/429
Commission Decision 2007/777/EC

These place obligations on UK GB importers including EU paperwork regarding plants from third countries under Regulation (EU) 2016/2031.

Adopting EU law on all non Northern Irish UK imports in these categories of goods is legally and politically contentious and deserving of scrutiny. It is also unclear why this is implementing the Protocol as these EU law acts are unilateral and came in after the agreement of the Protocol and its relaunch as the Windsor Framework. They could be revoked unilaterally by the EU. They are not the Protocol or Windsor Framework itself.

It is also unclear whether these Regulations achieve their stated goal. This appears to be by applying EU law on the external UK border the traffic of goods from Great Britain to Northern Ireland will be easier. This may not be the case, for even with these rules and the appropriate paperwork these goods will still need to go through the ‘green lane’ into Northern Ireland and so have (the same?) appropriate paperwork. And that does not take into account that many goods are ineligible for the Green Lane as they may not be going directly to an enduser – maybe to a warehouse or distribution centre.

It is also unclear whether the UK Government can guarantee any reciprocity. As an example Article 9 (2) A of the Regulation states that fish entering NI from GB can only take advantage of the retail lane if:

“the United Kingdom decides to and as a result provides written evidence:

¹ <https://www.legislation.gov.uk/ukxi/2024/853/made>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023R1231>

(i) that import conditions, official controls and verification requirements apply under the national law of the United Kingdom thereby ensuring that fishery products obtained from illegal, unreported and unregulated fishing as defined in Article 2 of Regulation (EC) 1005/2008 and in Union acts adopted pursuant to that Regulation are not imported into the United Kingdom;

There is no guarantee that this evidence will be accepted.

I would therefore request that your Committee look at this regulation; the deficiencies in the explanatory information, the political context of applying EU law on the UK's border, if it is vires under the EU Withdrawal Act and whether it can actually be guaranteed to achieve its purported aim.

6 September 2024

Response from the Department for Environment, Food and Rural Affairs

Why are we making these changes on our borders?

The Northern Ireland Retail Movement Scheme enables a broad range of goods to move from Great Britain into Northern Ireland under simplified arrangements. This includes rest of world origin products, where the UK's import requirements match or exceed those in the EU.

Defra, working with DAERA and the UK food industry, has identified further goods which should benefit from those arrangements and is adapting our import requirements accordingly. That is a decision taken by the Government in order to support the effective functioning of the UK internal market.

Why are there still checks for good moving GB to NI?

The arrangements in the Windsor Framework are there to support the smooth flow of goods within the UK internal market, while preserving the unique access that Northern Ireland has to the EU market. That is reflected in the arrangements in place for the Northern Ireland Retail Movement Scheme.

What will happen in the case of divergence in these rules affecting the UK?

The UK will always be able to choose how to respond to changes in the EU's import controls for any of the affected products. If the UK and EU regimes diverge, the UK will determine whether to adopt measures in order to match.

We remain committed to maintaining a robust biosecurity regime with very high standards on animal and plant health, both now and in the future. As part of this, we continue to protect against critical disease risks and pests, as does the EU.

Why was there no public consultation for this SI?

This SI delivers on specific commitments set out in the 'Safeguarding the Union' Command Paper in January 2024, therefore no new policy has been introduced. Furthermore, this safeguards the

ability for these goods to move under the simplified arrangements provided under the Northern Ireland Retail Movement Scheme, and thus support trade between Great Britain and Northern Ireland. On this and other aspects of the NIRMS arrangements, there has been extensive engagement with industry and stakeholders in Northern Ireland.

The Explanatory Note refers to EU laws instead of UK laws, does this affect the powers of this SI?

It is correct that the reference to Article 9 in the Explanatory Note is intended to refer to Article 9 of Regulation (EU) 2023/1231 (“the SPS Regulation”). The SPS Regulation is part of the Windsor Framework which is applicable in Northern Ireland.

23 September 2024

Submission from Mr Paul Richardson, Universal Meat Company

Statutory Instruments 2024 No.853

<https://www.legislation.gov.uk/uksi/2024/853/made>

In relation to the above instrument released on 9th August, 2024, I wish to bring to the attention of the committee the omission of product originating from Brazil.

Part 3 of the instrument makes specific mention of imported Products of Animal Origin from China and Thailand as having exemption from Third Country origin goods being shipped GB-NI under the Windsor Framework (in that they are allowed to make this movement, whilst all other Third Countries are not).

Explanatory Note 12 of the instrument provides links to establishments from China and Thailand that are approved for the entry of meat products in to the European Union.

I ask that you refer to the link below that lists the establishments in Brazil that are also approved to make these supplies.

https://webgate.ec.europa.eu/tracesnt/directory/listing/establishment/publication/index#!/view/BR/MEAT_PRODUCTS

The explanatory material laid in support of the instrument gives no explanation as to why Brazil has not been included in the countries exempted, despite there being more EU approved plants in Brazil (57) than China (45).

There would appear to be inadequacies in the consultation process relating to the instrument, in that there was no consultation with traders relating to the exemption list of countries.

As such, over 700,000kgs of goods travelling annually BR-GB-NI have been removed from the Northern Ireland market. This does not allow for smooth flow of trade within the UK market, and does not address the democratic deficit that was at the heart of the Northern Ireland Protocol, both of which the Windsor Framework alleges to have resolved.

I ask that proper consideration be made to adding product with Brazil origin being added to the Part 3 of the instrument.

25 September 2024

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Response from the Department for Environment, Food and Rural Affairs

The list of products which has been included in the scope of this legislation was developed with industry stakeholders in the United Kingdom, on the basis of factors such as volumes of trade (and on the impact on supply chains). The Government could, in future, decide to add further products to the list, and we will keep the list under ongoing review to ensure that we are able to reflect and respond to industry feedback. To that end we will continue to engage comprehensively with industry on this matter, as we have done previously with Universal Meats.

It should be noted that Brazilian poultry can be moved under the NIRMS scheme if it has entered an EU BCP [Border Control Post] before entering the UK. Moreover, products can be imported directly into Northern Ireland; and when this is so, as of 30 September the new Tariff Rate Quota solution will enable traders to take advantage of over 13,000 tons of lamb, beef, and poultry worth of UK tariff quotas every year. This reflects Northern Ireland's integral place in the UK.

1 October 2024

Submission from Lord Morrow of Clogher Valley

I write to express serious concerns about the Windsor Framework (Retail Movement Scheme: Plant and Animal Health) (Amendment etc.) Regulations 2024 which were made on 8 August.

Thinking of your terms of reference, the main concern that I have is one I would like to raise under: 4 (a) **(a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House:**

The explanatory notes state that the purpose of these regulation is in 'particular to give effect to Article 9 of Regulation (EU) 2023/1231 (OJ No. L 165, 29.6.2023, p.103),' in respect of the movement of certain rest of the world retail goods from Great Britain to Northern Ireland.

This raises some points of great constitutional importance.

In the first instance, it is not possible to assess the Windsor Framework (Retail Movement Scheme: Plant and Animal Health) (Amendment etc.) Regulations 2024 without assessing Regulation (EU) 2023/1231 which Parliament has not done on account of the fact that this is the legislation of the Parliament of another political entity of which we are not a part.

In the second instance, the Regulation in question is one that was made after the UK left the European Union.

In the third instance, it pertains, not to the governance of the EU and Northern Ireland, but just to the governance of the United Kingdom.

In this regard it is worth quoting its name in full:

'Regulation (EU) 2023/1231 of the European Parliament and of the Council of 14 June 2023 on specific rules relating to the entry into Northern Ireland from other parts of the United Kingdom

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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.’

This is legislation that has been made for the United Kingdom by a group of 27 countries none of which includes the country for which the legislation was made, and which the United Kingdom Parliament has not scrutinised and which the United Kingdom Parliament has no power to change even if it wanted to.

The passage of the Windsor Framework (Retail Movement Scheme: Plant and Animal Health) (Amendment etc.) Regulations 2024 affords us the opportunity not just to look at a piece of legislation made for the governance of the United Kingdom by a foreign entity but also to ask whether it is appropriate that that other political entity, of which we are not a part, should make our laws.

The Windsor Framework (Retail Movement Scheme: Plant and Animal Health) (Amendment etc.) Regulations 2024, however, also raise some very specific constitutional concerns because they also afford an opportunity to demonstrate why what has been asserted by the former Government about the Windsor Framework is untrue.

These regulations give effect to Regulation (EU) 2023/1231 which it has been claimed secures the UK internal market for goods.

An internal market is secured by the free movement of goods without the obstruction of an international customs or an international Sanitary Phytosanitary Border (SPS).

What Regulations 2023/1231 secure is not the removal of that border and the restoration of the UK Internal Market for goods but rather easements of the border, which are cashed in in relation to some additional Rest of the World products specified in the Windsor Framework (Retail Movement Scheme: Plant and Animal Health) (Amendment etc.) Regulations 2024.

This is a critical distinction because it makes it clear that rather than restoring the UK Internal Market, EU Regulation 2023/1231 confirms, and thus the Windsor Framework (Retail Movement Scheme: Plant and Animal Health) (Amendment etc.) Regulations 2024 in seeking to give effect to them confirm, that the UK Internal Market for goods has not been restored.

Even under the easements offered by EU Regulation 2023/1231 and applied to some additional Rest of the World goods through the Regulations before us today those moving the goods are still required (as is anyone using the so-called UK Internal Market System) to take the basic steps associated with crossing an international frontier in that the following are still required:

- i) An export number
- ii) An international SPS document (albeit less demanding than that associated with the ‘Red Lane’, that is the international border without any easements)
- iii) The need to be subject to 100% documentary checks
- iv) 5 to 10% identity checks

Traders are also required to negotiate additional hurdles in that to access the easements in ii) they must secured 'trusted trader' status and use Not for EU labels when required.

Moreover, Article 14 of EU Regulation 2023/1231 creates a default position to the removal of border easements if it is not satisfied with the conduct of the UK on the bases set out in that Article. This demonstrates that the default position, which is controlled by the EU and not be the UK even though we are talking about the imposition of a border dividing our country into two, is the most destructive expression of an international border.

This raises very specific issues for the Windsor Framework (Retail Movement Scheme: Plant and Animal Health) (Amendment etc.) Regulations 2024 because if the EU deploys its powers in Article 14, the Windsor Framework (Retail Movement Scheme: Plant and Animal Health) (Amendment etc.) Regulations 2024 would be instantly rendered null and void.

(b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;

Since the parent Act passed the UK Government has reneged on its commitment to require Not for EU labels for products in GB for GB consumption as well as NI consumption, so that GB producers, burdened with the need to provide a small product line with different labelling for Northern Ireland, would have no incentive to cease supplying Northern Ireland. This means that a central plank of the so-called UK Internal Market system is now providing a basis for further isolating Northern Ireland.

(c) that it may imperfectly achieve its policy objectives;

The stated purpose of the regulations in the explanatory notes is to enable some Rest of the World goods to access NIRMS the Northern Ireland Retail Movement Scheme, the stated purpose of which is to restore the integrity of the UK single market for goods, which it fails to, for the reasons set out above.

8 October 2024

Submission from Baroness Hoey of Lylehill and Rathlin

It is the purpose of these regulations - according to the explanatory notes - to give effect to Article 9 of Regulation (EU) 2023/1231.

It is, therefore, not possible to assess the Windsor Framework (Retail Movement Scheme: Plant and Animal Health) (Amendment etc.) Regulations 2024, without also assessing EU Regulation 2023/1231.

The full title of this Regulation is:

'Regulation (EU) 2023/1231 of the European Parliament and of the Council of 14 June 2023 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.'

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It thus involves the 27 Member states of the EU disrespecting the territorial integrity of the UK both in claiming the right to make laws for parts of the United Kingdom and, further, to do so on a basis that divides the United Kingdom into two through the imposition and governance of an international border.

Although the Regulation (EU) 2023/1231 offer border easements, they do not offer to remove the border, and thereby respect the territorial integrity of the UK, in fact quite the opposite.

Through Article 14 Regulation (EU) 2023/1231, the EU jealously guards the governance of the border, firstly making it plain that the default position is back to the border with no easements, secondly, holding this judgement to itself.

This raises a critical point for the Windsor Framework (Retail Movement Scheme: Plant and Animal Health) (Amendment etc.) Regulations 2024, demonstrating that they are not held at our pleasure but at that of the EU, and, in the event of the EU removing the easements under Article 14 of Regulation 2023/1231, the Windsor Framework (Retail Movement Scheme: Plant and Animal Health) (Amendment etc.) Regulations 2024 would be effectively nullified, not because of a decision of the United Kingdom Parliament but because of a decision of the EU.

This is no basis upon which to make legislation.

8 October 2024