

Submission from Mr Jim Allister KC MP on the draft Movement of Goods (Northern Ireland to Great Britain) (Animals, Feed and Food, Plant Health etc.) (Transitory Provision and Miscellaneous Amendments) Regulations 2024

I write to draw the Committee's attention to Movement of Goods (Northern Ireland to Great Britain) (Animals, Feed and Food, Plant Health etc.) (Transitory Provision and Miscellaneous Amendments) Regulations 2024 laid on 28th October.

I do so very much with your terms of reference in front of me and wish to comment specifically under:

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

In highlighting potentially divergent implications of these regulations, I should make it clear from the outset that I am personally committed to the free movement of UK goods within the UK economy in all directions.

These regulations are clearly of great political, legal and, indeed, constitutional significance, giving effect to something the Government and the EU stressed would not happen, see the Preamble to the Protocol: 'NOTING that nothing in this Protocol prevents the United Kingdom from ensuring unfettered market access for goods moving from Northern Ireland to the rest of the United Kingdom's internal market,'¹ namely the imposition of a border on the flow of goods from Northern Ireland to Great Britain.² (I appreciate that these were statements from Minister's of the previous government, but one would hope that basic constitutional-trading assurances such as these would be respected regardless and if they were not this would not change the fact that the change would be a huge political importance.) These Regulations give effect to a two-way sea border. This is politically important for two reasons:

In the first instance, when the Government sought to suggest that the Irish Sea Border is only a one-way Sea Border, (with completely unfettered movement for goods from NI to GB, the Green and Red Lane borders only applying to movements from GB to NI) the fact that this is completely unworkable was repeatedly pointed out to them by logistics experts who were ignored. If there is no border with checks on goods moving across the UK land-border with the Republic, it was inevitable that goods would come through from the Republic to make the Irish Sea North logistics journey, avoiding the border costs associated with Irish Sea South. In this context the imposition of a definition of Northern Ireland Qualifying Goods was always inevitable, not least because without it we would see significant displacement of traffic from Irish

¹ [Revised Protocol to the Withdrawal Agreement.pdf](#)

² See for example: 'Let me start with the first question. Chancellor, I suppose this is to you really. What do the Government mean by "unfettered access"? Michael Gove: It means, as I hope we were able to lay out in some detail in our Command Paper and the associated statement to the House of Commons, that goods from Northern Ireland businesses should be able to circulate freely in the rest of the United Kingdom internal market without let or hindrance. Q46 Chair: Thank you, but in terms of accessing—actually getting into—that market, what regime are you envisaging? Michael Gove: The broad outline in the Command Paper that we put forward made clear that, as the protocol itself makes clear, unfettered access would mean there would be no discrimination exercised towards Northern Ireland businesses or citizens. They are fully citizens of the United Kingdom. Northern Ireland is in the UK customs territory and, indeed, should we conclude free trade agreements with other nations, Northern Ireland's businesses and citizens should benefit from those as well. For example, when it comes to any good that is produced or manufactured in Belfast or Ballymena, when it enters the United Kingdom, whether that is from Larne through to Cairnryan or Belfast to Liverpool, there should be no requirement for any type of check or any interruption in the free flow of that good into the UK. Q47 Chair: So there is no paperwork to be completed in order to cross the sea. Michael Gove: There are no import declarations, no entry summary declarations, no tariffs, no customs checks, no regulatory checks, no additional approvals and no requirement to submit any declarations. For any individual businesses in Northern Ireland, there will be unimpeded, unfettered access for those goods to the rest of the UK.' committees.parliament.uk/oralevidence/544/pdf/

Sea South to Irish Sea North. These regulations are, as such, the moment at which the Irish Sea Border is exposed as a two-way border, with obstacles on goods moving from NI to GB as well as from GB to NI. Of course, the response made to this is that Northern Ireland Qualifying Goods will experience no border and so there will be no border, but that is an impossible position for the Government to sustain without getting into enormous difficulty.

The only way in which it will be possible for Northern Ireland Qualifying Goods to move freely without any checks, however, is if the government trusts those lorries carrying Non-Qualifying Northern Ireland Goods to declare this and stop voluntarily, even as they trust those lorries that just pass through to be only carrying Northern Ireland Qualifying Goods. In this context the solution that these Regulations are advancing rests on two central provisions:

First, a legal requirement that those moving Non-Qualifying NI goods submit to the border processes in terms of pre-notification, paperwork and the relevant costs.

Second, the opportunity to obey the law, completing all the right forms etc in advance and to then present themselves at a border control post.

These depend on the basic understanding that if any lorry fails to comply and sails through, pretending to be just carrying NI Qualifying Goods and are subsequently stopped by the police on the M6 (or where-ever) on their way to London and are found to be carrying goods that have not negotiated the border then the business concerned would have broken the law and have to face the consequences.

The difficulty with this arrangement is that if you are depending on people voluntarily presenting themselves because you are not randomly stopping lorries, so that lorries carrying NI Qualifying Goods don't experience a border, then you don't need to ask those carrying Non-Qualifying NI goods to stop at the border. All you need to do is to require those carrying Non-NI Qualifying Goods, who will have pre-notified, to go to a particular place for checks which could be miles from the border.

The following from the EM similarly opens the door to the possibility that checks do not have to happen on the border.

*'5.8 Further modifications made by regulation 2(3) include providing that official controls carried out on NI-GB non-qualifying Northern Ireland movements may be carried out at a border control post in Great Britain or any other appropriate place in the customs territory of the UK as specified in Article 44(3) of the Official Controls Regulation, at the frequency rate published by GB Ministers from time to time.'*³

44 (3) states:

'3.The official controls provided for in paragraph 1 shall be performed at an appropriate place within the customs territory of the United Kingdom, including:

- (a)the point of entry into Great Britain;*
- (b)a border control post;*
- (c)the point of release for free circulation in Great Britain;*
- (d)the warehouses and the premises of the operator responsible for the consignment;*
- (e)the place of destination.'*⁴

³ [ukdsiem_9780348264807_en_001.pdf](#)

⁴ [Regulation \(EU\) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations \(EC\) No 999/2001, \(EC\) No 396/2005, \(EC\) No 1069/2009, \(EC\) No 1107/2009, \(EU\) No 1151/2012, \(EU\) No 652/2014, \(EU\) 2016/429 and \(EU\) 2016/2031 of](#)

This is of huge political significance because if we are saying that it is acceptable to run the border on this basis, then there is no reason why the border cannot be run on this basis, where it actually is across the island of Ireland. The division of the United Kingdom into two by an international customs and SPS border is deeply contentious.

First, it disenfranchises 1.9 million who can no longer stand for election to make the laws to which they are subject not just in relation to one law of 300 laws but a staggering 300 areas of law. It subjects Northern Ireland to the unique indignity of having the value of the vote and the ballot box degraded, contrary to the Belfast Agreement. While people in the rest of the UK and in the Republic of Ireland can stand for election to make all the laws to which they are subject, the people of NI now only have the right to make some of the laws to which they are subject.

Second, while this arrangement is the result of an agreement between the UK and the EU27, it undermines the most basic principle of international relations and international law, the territorial integrity of the constituent elements of the international society of states that international law is designed to serve. One of the most foundational statements in this regard which the current arrangements violate is the UN Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. *“Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country. ... The principles of the Charter which are embodied in this Declaration constitute basic principles of international law, and consequently appeals to all States to be guided by these principles in their international conduct and to develop their mutual relations on the basis of the strict observance of these principles. ... Where obligations arising under international agreements are in conflict with the obligations of Members of the United Nations under the Charter of the United Nations, the obligations under the Charter shall prevail”*⁵ (Emphasis added).

There has been an attempt to justify this arrangement on the basis of the fact that it has been argued that the Belfast Good Friday Agreement prohibits the construction of border infrastructure on the border of Northern Ireland the Republic of Ireland.

What these regulations demonstrate is that it is possible to have a border arrangement that does not require infrastructure on the border and in so doing it makes the partial disenfranchisement of the people of Northern Ireland, and the dangerous precedent arising from sacrificing the principle of the territorial integrity of the UK, not only deeply wrong but also entirely unnecessary. The border itself is profoundly contentious and unjust but it is made gratuitously contentious and unjust by these regulations because they demonstrate that there is another way and that the pain and distress caused by the border is entirely unnecessary.

8 November 2024

[the European Parliament and of the Council, Council Regulations \(EC\) No 1/2005 and \(EC\) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations \(EC\) No 854/2004 and \(EC\) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC \(Official Controls Regulation\) \(Text with EEA relevance\)](#)

⁵ [1970-Declaration-on-Principles-of-International-Law-Concerning-Friendly-Relations.pdf](#)

Response from the Department for Environment, Food and Rural Affairs

- Northern Ireland businesses continue to have full unfettered access when moving qualifying Northern Ireland goods to the rest of the UK internal market, directly from Northern Ireland to Great Britain, and indirectly via Ireland.
- These protections are expressly enshrined in both primary and secondary legislation. Notably, in the Windsor Framework and the UK Internal Market Act 2020, and they were further enhanced by measures taken in connection with the restoration of the Northern Ireland Executive earlier this year. In particular, at that time, we legislated to more closely target the benefits of unfettered access on Northern Ireland businesses. Accordingly, only food and feed goods arriving via Ireland that have been dispatched for movement into Great Britain from a Northern Ireland registered or approved food and feed establishment are qualifying Northern Ireland goods for the purpose of sanitary and phytosanitary controls.
- The Windsor Framework Command Paper, published in February 2023, and the Border Target Operating Model, published in August 2023, both state Northern Ireland businesses will have unfettered access when moving qualifying Northern Ireland goods into Great Britain. The Border Target Operating Model also states that non-qualifying goods will be subject to sanitary and phytosanitary controls when moving from Northern Ireland into Great Britain. Qualifying Northern Ireland goods will continue to have unfettered access to the Great Britain market, and continue to be exempt from the sanitary and phytosanitary controls implemented by this legislation.
- The approach adopted in The Movement of Goods (Northern Ireland to Great Britain) (Animals, Feed and Food, Plant Health etc.) (Transitory Provision and Miscellaneous Amendments) Regulations 2024 (OFC/09) is consistent with these commitments.
- If goods have been moved into Northern Ireland from outside the UK and one of the main purposes of that movement is to gain qualifying Northern Ireland goods status in any subsequent move to Great Britain, the goods are not qualifying Northern Ireland goods and must comply with the relevant sanitary and phytosanitary and customs requirements.
- As above, these measures serve to focus the benefits of unfettered access on Northern Ireland traders, further sharpening their competitive advantage. This legislation therefore supports Northern Ireland businesses and strengthens Northern Ireland's place in the UK Internal Market.
- The long-term approach to sanitary and phytosanitary controls, including checks, on EU and rest of world goods entering Great Britain from the island of Ireland is yet to be announced. We remain firmly committed to protecting the Good Friday Agreement and Northern Ireland's place in the UK internal market. The long-term approach to SPS controls on non-qualifying Northern Ireland goods entering Great Britain from Northern Ireland will respect these principles, and will not impact the unfettered movement of qualifying Northern Ireland goods.

15 November 2024