

Submission from Mr Jim Allister KC MP (Traditional Unionist Voice) on the Official Controls (Plant Health) and Phytosanitary Conditions (Amendment) Regulations 2025 (SI 2025/13)

I write to draw the Committee's attention to the Official Controls (Plant Health) and Phytosanitary Conditions (Amendment) Regulations 2025 which were laid on 8th January.

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'

Given that:

- 1) one of the most important, if not the most important, functions of the state pertains to the provision of security, a critical aspect of which is biosecurity;
- 2) a government cannot discharge its biosecurity function if it refuses to protect its borders;
- 3) Article I (2) of the Windsor Framework states: *'2. This Protocol respects the essential State functions and territorial integrity of the United Kingdom'*;
- 4) the legal context in which these regulations operate includes the Official Controls Amendment Regulations 2024 which make it clear that it is possible to have an SPS border without infrastructure dealing with EU goods from ROI, thus removing the attempted justification for moving the border to the Irish Sea, i.e. avoiding a hard UK-ROI border;
- 5) these regulations do not appear (although we are happy to be corrected) to exist in tandem with parallel UK NI legislation, affording UK citizens in Northern Ireland biosecurity along with the rest of the UK, together with the border processes mentioned in (4) which can now plainly be deployed on the international border and
- 6) the heightened concerns around biosecurity arising from the outbreak of Foot and Mouth in Germany,¹

... the implication of these Regulations would appear to be deeply controversial and in violation of the essential state function commitments set out in Article I (2) of the Windsor Framework/Northern Ireland Protocol.

It is understood that the Northern Ireland part of the UK is in a separate SPS zone from the Great Britain part of the United Kingdom, but both are in the United Kingdom and the security of both, and thus the biosecurity of both, are the responsibility of the UK Government. The biosecurity state function of the UK can no more be abdicated and given to another state in relation to Northern Ireland than it can in relation to Great Britain.

As things currently stand, these Regulations are problematic because: i) they appear to constitute the UK Government effectively renouncing its essential biosecurity state function with respect to Northern Ireland, in violation of Article I (2) of the Windsor Framework, leaving the UK's land border with the Republic of Ireland and EU wide open and ii) they do so with no credible justification given that the means of protecting that border now (post the Official Controls

¹ No suggestion is being made that the biosecurity concerns of these regulations, pertaining to plant health, engage Foot and Mouth. The point is simply that in the current context the prospect of the state abdicating any aspects of its biosecurity function in relation to a portion of its people is a matter of political concern.

Amendment Regulations 2024) do not depend on having a hard border and so could be introduced in relation to the international border.

If the UK Government judges that *Heterobasidion irregulare* (known to cause Annosus root and butt rot), pose an unacceptable risk to GB, as they would cause economic/environmental damage if introduced, would they not also pose an unacceptable risk to the rest of the United Kingdom?

If the UK Government judges that specific import requirements in relation to *Popillia japonica* (known as the Japanese beetle) because it is spreading in Europe and therefore warrants additional measures to prevent its entry into GB, does the spread in the rest of Europe not similarly constitute a threat to the biosecurity of that part of the UK that is Northern Ireland??

Presumably the Government could respond and say, we don't need to guard the border into Northern Ireland from the Republic because NI is protected in the same way as the Republic by virtue of effectively being in the EU.

If it does, however, the UK Government would be conceding that it has released an essential state function – biosecurity – contrary to:

- i) Article I (2) of the Windsor Framework,
- ii) Its moral obligation to protect its own people and

And, critically, now with no attempted justification. The justification for moving the border from the international border to the Irish Sea was the desire to avoid hard border arrangements along the international border. However, border legislation, including the Official Controls Amendment Regulations 2024, now makes provision for a soft (i.e. without hard infrastructure in the border) SPS border without infrastructure - courtesy of electronic pre-notification, and checks away from the border - and thus sweeps away the justification for having the border in the wrong place.

Moreover, in effecting a border between Great Britain and the outside world, as a consequence of which Northern Ireland is left in the outside world with all the foreign countries of the globe, these regulations are implicated in the mass disenfranchisement that arises from the Windsor Framework imposing the border in the wrong place, the offering up of the 1.9 million people of Northern Ireland not just in relation to one or even 300 laws but in relation to a staggering 300 areas of law. No state has ever before sought to partly cast off its citizens in this way (their having previously enjoyed full citizenship), leaving them disenfranchised in a strange nether world where they are neither fully in one state nor fully in the other. That such a radical far-reaching constitutional change, propelling us from the status of full to partial democracy, should have been imposed without a prior referendum makes it one of the most extraordinary social injustices of the 21st century.

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

The Regulation making powers were made at a time when the United Kingdom was part of the European Union and thus subject to the same single market and single market legislation as the Republic of Ireland. It was not envisaged at the time that the Regulation making powers were made that they could be used to disturb the integrity of any member state, whether it remained in the EU or subsequently left, because of the general prohibition against all such acts in international law. Specifically, for example, the UN Declaration on Principles of International Law Friendly Relations and Co-operation among states in accordance with the Charter of the United Nations states:

'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.'^[1]

In this context the way in which these regulation making powers have been deployed is deeply problematic.

'3 (d) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation.'

Given the fact that in the explanatory memorandum: i) the UK Government makes it plain that the provision of these regulations is of central importance to the discharge of its biosecurity functions for its citizens and ii) implies the need for a border to protect GB from the outside world, the EM effectively implies that NI is cut off from the rest of the UK, conflated with the rest of the world. No attempt has been made to consider how UK biosecurity provisions with respect to NI engage with, or relate to, UK biosecurity provisions with respect to GB. It simply states, as if the UK did not exist, at 4.1: 'This instrument protects biosecurity and supports trade between Great Britain ("GB") and third countries by introducing or amending protective measures against high-risk pests of plants.'

This is a serious shortcoming that needs to be remedied.

16 January 2025

Response from the Department for Environment, Food and Rural Affairs

The island of Ireland has been treated as a single epidemiological unit for decades. The purpose of these regulations is to amend GB-specific phytosanitary legislation to ensure that the biosecurity risks posed to Great Britain are addressed. These new or amended pest measures do not impact Qualifying Northern Ireland Goods moving within the United Kingdom.

The regulations amended by this instrument do not apply within Northern Ireland. This is the normal approach, as demonstrated by SI 2024/610, SI 2023/1131, SI 2022/1120, SI 2021/1171, SI 2021/641.

Northern Ireland continues to be able to respond to pest risks, such as *Popillia japonica* and *Heterobasidion irregulare*, via Regulation (EU) 2016/2031 and through the implementation of national measures, specifically for NI where needed. For example, the measures against *Popillia japonica* are already in place in Northern Ireland. This GB-wide amendment therefore aligns Great Britain with Northern Ireland. The four nations work together closely on these policy matters, including legislative changes, via the UK Plant Health Provisional Common Framework. Great Britain and Northern Ireland will continue to work closely together on plant health issues and Northern Ireland will continue to play a full and comprehensive role in technical and policy decisions affecting the UK as a whole.

This instrument does not treat Northern Ireland as a third country. Indeed, the Windsor Framework underscores Northern Ireland's place in the UK. The UK Government wants to see the Windsor Framework's benefits realised for the benefits of businesses and people in Northern Ireland and across the UK, in a manner that meets our international obligations. We are continuing to take forward work to implement the Windsor Framework and are engaging the Northern Ireland Parties as part of those efforts.

^[1] [A_RES_2625-Eng.pdf](#)

Mr Jim Allister MP referred to heightened concerns around biosecurity arising from the recent outbreak of Foot and Mouth disease in Germany in his submission. In Northern Ireland, controls on meat and live animals will apply to a 3 kilometres protection zone and 10 kilometres surveillance zones surrounding the infected premises in Germany. Products from the zones cannot move to Northern Ireland. Additional health requirements will also apply for the movement of live animals from outside of these zones. Qualifying Northern Ireland goods will continue to have full unfettered access to the rest of the UK, these provisions are unaffected by these new control measures.

22 January 2025