

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Third Delegated Legislation Committee

## DRAFT DEFINITION OF QUALIFYING NORTHERN IRELAND GOODS (EU EXIT) REGULATIONS 2020

*Tuesday 10 November 2020*

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**Saturday 14 November 2020**

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**The Committee consisted of the following Members:**

*Chair:* †MRS MARIA MILLER

- |  |  |
|--|--|
| † Anderson, Lee ( <i>Ashfield</i> ) (Con)                | Harman, Ms Harriet ( <i>Camberwell and Peckham</i> )<br>(Lab)                    |
| † Bacon, Gareth ( <i>Orpington</i> ) (Con)               | † Henry, Darren ( <i>Broxtowe</i> ) (Con)  |
| † Benton, Scott ( <i>Blackpool South</i> ) (Con)         | † Hunt, Jane ( <i>Loughborough</i> ) (Con)                                       |
| † Blomfield, Paul ( <i>Sheffield Central</i> ) (Lab)     | † Mordaunt, Penny ( <i>Paymaster General</i> )                                   |
| † Butler, Rob ( <i>Aylesbury</i> ) (Con)                 | † Rutley, David ( <i>Lord Commissioner of Her Majesty's</i><br><i>Treasury</i> ) |
| † Crosbie, Virginia ( <i>Ŷnys Môn</i> ) (Con)            | Thompson, Owen ( <i>Midlothian</i> ) (SNP)                                       |
| Davies, Geraint ( <i>Swansea West</i> ) (Lab/Co-op)      | Ben Rayner, <i>Committee Clerk</i>   |
| Elliott, Julie ( <i>Sunderland Central</i> ) (Lab)       |  |
| Farry, Stephen ( <i>North Down</i> ) (Alliance)          |  |
| † Fell, Simon ( <i>Barrow and Furness</i> ) (Con)        | † <b>attended the Committee</b>  |
| † Fletcher, Colleen ( <i>Coventry North East</i> ) (Lab) |  |

## Third Delegated Legislation Committee

Tuesday 10 November 2020

[MRS MARIA MILLER *in the Chair*]

### Draft Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020

**The Chair:** Before we begin, may I remind colleagues about social distancing; we are not using the central rows but Members may sit in the Public Gallery and still contribute to the debate.

9.25 am

**The Paymaster General (Penny Mordaunt):** I beg to move,

That the Committee has considered the draft Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020.

It is a pleasure to serve under your chairmanship, Mrs Miller.

The statutory instrument relates to the establishment of a definition of “qualifying goods” for the purposes of delivering unfettered access for Northern Ireland goods moving to the rest of the United Kingdom market from the end of the transition period. The SI should be seen in the wider context of the Government’s clear commitment to deliver unfettered access, and to guarantee that in legislation by the end of this year. That commitment was made in the 2019 Conservative manifesto and in the ‘New Decade, New Approach’ deal, which restored power-sharing to Northern Ireland. The SI is fundamental to the delivery of that commitment.

Unfettered access is based on several fundamental tenets. First, that there will be no customs and regulatory checks and processes for qualifying Northern Ireland goods moving from Northern Ireland to Great Britain. Secondly, that no additional authorisations or approvals will be required for placing those goods on the market in the rest of the UK; and thirdly, that those goods can continue to be sold throughout the UK market.

The United Kingdom Internal Market Bill puts the building blocks in place for unfettered access for the long term. It will enshrine in primary legislation that qualifying Northern Ireland goods will benefit from mutual recognition—enabling goods to continue to be placed on the whole of the UK market, even where the protocol applies different rules in Northern Ireland—and prohibits new checks and controls as goods move from Northern Ireland to the rest of the UK.

Those are significant and robust protections, and they will be subject to only the most limited possible exceptions, such as to ensure that the UK can comply with its international obligations, for example regarding the movement of endangered species. For those protections to have effect, we must have a definition in law of what are the ‘qualifying Northern Ireland goods’ that benefit from them. That is the purpose of the SI.

It is important to be clear that the policy of unfettered access will be given effect in two phases. The first phase is focused on avoiding disruption and maintaining continuity from the beginning of next year, in line with our broader Great Britain-European Union approach. For that reason, the SI takes a necessarily broad-based

approach, outlining that goods will qualify where they are in ‘free circulation’ in Northern Ireland, on the basis that they are not under any customs supervision, as will any good that has undergone processing operations in Northern Ireland under the inward processing procedure, and which only incorporates GB inputs, and inputs that were in free circulation in Northern Ireland.

Those are quite technical descriptions, but in practice they mean no more than no change to how Northern Ireland businesses move goods directly to the rest of the UK from 1 January 2021 compared with now. The SI is an important first step to make sure that Northern Ireland traders can continue to move their goods in an unfettered way from the end of the transition period, which meets the Government’s clear commitment under the ‘New Decade, New Approach’ deal. It is a necessary first step, but we want to guard against the possibility that it is used by other actors who may wish to avoid import formalities that should otherwise be met. That is why the SI is the first phase and will be accompanied in due course by anti-avoidance measures contained in legislation brought forward by my colleagues in the Treasury, which will enable us to take action in such cases.

The SI represents only the initial approach. During 2021 it will be replaced with a regime that targets its benefits on Northern Ireland businesses, to ensure that they have a competitive advantage over other traders on the island of Ireland, and that goods moving from Ireland or the EU are subject to full third-country checks and controls. That regime is in the process of being finalised through work with Northern Ireland businesses and the Northern Ireland Executive. We will provide further details on that in due course. We are also engaging with the devolved Administrations more broadly on the implications of that second phase, and we welcome that ongoing work.

In the meantime, we consider that it is right to proceed in a pragmatic way that maintains continuity for business, and our phased approach will achieve that. I hope that both Houses approve the SI because that will enable us to bring forward clear guidance for businesses that ensures that they are ready for the end of the transition period in that regard. I commend the regulations to the Committee.

9.31 am

**Paul Blomfield (Sheffield Central) (Lab):** It is a pleasure to rise to speak with you in the Chair, Mrs Miller.

As the Minister has said, the SI sets out the definition of ‘qualifying Northern Ireland goods’ in the context of the United Kingdom Internal Market Bill, about which the Opposition set out our concerns when it was debated in the Commons, and which was overwhelmingly amended last night in the other place by an extraordinarily broad coalition that included former leaders of the Minister’s party. They share our concern about the rule of law.

The Labour party clearly supports unfettered access of Northern Ireland businesses to the rest of the UK market, so will not oppose the SI today. As the Minister said, unfettered access was a commitment made in the ‘New Decade, New Approach’ agreement to restore devolved government to Northern Ireland, and Labour strongly welcomed that. However, the Opposition have concerns about the SI, which I believe the Minister anticipated in her opening remarks, and we would welcome some further assurances on them.

Our first concern relates to the breadth of the definition of ‘qualifying Northern Ireland goods’—something to which the Minister herself referred. The Government appear to acknowledge that it is problematic. It will need further clarification in further legislation because that definition is not sufficiently tightly drawn to provide protections. The SI is provided for by the Henry VIII powers under the European Union (Withdrawal) Act 2018, which gives the Government extraordinarily wide powers to ‘make any provision that could be made by an Act of Parliament (including modifying this Act)’.

We opposed that when that Act was debated two years, but in terms of the specifics of the SI, the wide drafting of the definition of qualifying goods is the problem, because it includes anything that is in circulation within Northern Ireland without being subject to customs control while there. However, it also includes goods processed in Northern Ireland from GB-derived goods, which are themselves subject to customs control in Northern Ireland. For example, that includes whisky imported from Scotland to Northern Ireland which might be in duty suspension in Northern Ireland, but then used to make mince pies in Belfast. That would leave those mince pies as ‘qualifying Northern Ireland goods’, despite the whisky used to make them being subject to customs control. Therefore, as I think the Minister acknowledged, the definition of ‘qualifying Northern Ireland goods’ is not sustainable in the longer term.

Separately, the National Crime Agency has warned that Northern Ireland could become a back door into the UK internal market, with the risk of counterfeit goods or, less likely, lower standard goods flowing into the UK. I am sure that the Minister is aware that UK farming unions have expressed concern that livestock and dairy could be disproportionately impacted by the measure. The potential problems were also raised by the Police Service of Northern Ireland in its evidence to the Northern Ireland Affairs Committee, when it said that the definition offered in the SI is simply not good enough.

The Opposition recognise that the Government see the SI as phase one and, as the Minister said, it is suggested that they will come up with a more refined definition in due course. Can the Minister tell us when that might be? When will we have the clarity that we all need? Can she also update us on the anti-avoidance regime, which is still to be designed and approved by the end of the year, according to the Government’s intention, to address the risk of Northern Ireland acting as a back door to Great Britain.

The Opposition are also concerned about how the SI will contribute to the weakening of the devolved Administrations’ powers. It must be read alongside the United Kingdom Internal Market Bill, clause 43 of which stops the devolved Governments imposing new kinds of checks or controls on qualifying Northern Ireland goods, and clause 11 applies the market principles of mutual recognition and non-discrimination to qualifying Northern Ireland goods. That means that the Welsh Government could not prevent something from being sold in Wales, or the UK Government could not stop something being sold in England, if it is a qualifying Northern Ireland good. If something is lawfully produced in, or imported into, Northern Ireland, it would have to be allowed to be sold in Wales, or indeed in Scotland or

England. I appreciate that that was a principle within the EU internal market, and the Minister will probably cite that, but the issue here is the imbalance. In England, the Government have the power to amend the United Kingdom Internal Market Bill to prevent that consequence from arising, either by modifying the exceptions in the Bill through an SI, or by getting Parliament to legislate. Those options are not available to Wales or Scotland, and therefore an asymmetry undermines the devolved powers. Can the Minister acknowledge that is the case, and whether the Government are content with that, given that it significantly undermines local voices as expressed through the devolved Administrations?

We are also concerned about the impact on standards across the UK. Given that Northern Ireland is essentially within the EU single market for goods, any good allowed to be sold within the EU, as complying with the EU single market, must be allowed to be sold in Northern Ireland. If, for example, Wales decided to exceed the EU environmental standards applicable to vehicle emissions, the combination of the regulations in the SI and the terms of the United Kingdom Internal Market Bill would mean that Wales could not succeed, because a lower-standard vehicle would be on sale lawfully in Northern Ireland and would be a qualifying Northern Ireland good, and the mutual recognition principle in the United Kingdom Internal Market Bill would have effect. Improving standards is an ambition that the Chancellor of the Duchy of Lancaster often espouses—despite the fact that he is refusing to sign up to any kind of safety net in the current negotiations with the EU—and I appreciate that the right hon. Gentleman probably would not want such consequences to arise, but the combination of the protocol, the SI and the internal market Bill make it very hard to see how Great Britain’s standards could ever exceed EU standards in matters such as environmental protection. Is that also the Minister’s understanding? If so, can she explain how the Chancellor of the Duchy of Lancaster will achieve his ambition?

Given that processed goods coming from Northern Ireland may have components originating outside of the country, does the approach outlined in the SI for qualifying goods have wider implications for the UK’s approach to rules of origin with the rest of the world?

I appreciate that the Minister said that further work was ongoing, but the Government have had more than a year since agreeing the withdrawal agreement and the Northern Ireland protocol. Frankly, it is disappointing that the issues I have highlighted have not been resolved by now, so I would be grateful if the Minister could answer my questions.

9.39 am

**Penny Mordaunt:** I thank the hon. Member for Sheffield Central for his helpful remarks, and for the Opposition’s support for the SI. It is important that we regulate for the definition of qualifying Northern Ireland goods and that we can move on to provide the explanations and certainty that business would like.

We are discussing a narrow issue, and there are much more exciting things going on this week with the United Kingdom Internal Market Bill, so I will not rehearse all arguments about that now. Fundamentally, the controversial clauses to which the hon. Gentleman referred are about protecting the integrity of the United Kingdom. I believe that that is well understood, certainly by the vast majority

[*Penny Mordaunt*]

of Members of this elected House. That is the purpose of those clauses, and their powers will only ever be drawn on should we be in a situation where they are required.

I assure the Committee that the SI is part of our clear commitment to unfettered access, and I am sure that the hon. Gentleman knows that that is its purpose, along with protecting Northern Ireland's place in the internal market. Those will remain our overriding priorities in our work in the weeks ahead.

The hon. Gentleman asked whether the definition of 'qualifying Northern Ireland goods' is too broad. It is important to note that the SI is part of a phased approach to develop a bridge, and it is intended to be no more than a stopgap to a longer lasting regime that will focus its benefits on Northern Ireland businesses. As I outlined, that regime is being developed with Northern Ireland businesses and the Northern Ireland Executive, and will be introduced during the course of 2021. In line with our broad policy, we will take a sensible, practical phased approach to that regime, which is what businesses in Northern Ireland and elsewhere have asked us to do. I note the hon. Gentleman's concerns, but the SI is just a stopgap measure.

The hon. Gentleman also spoke of the risk of Northern Ireland being used as a back door to the GB market, and cited the seasonal example of mine pies. To prevent any traders from misusing the proposed system, the United Kingdom Internal Market Bill and the SI will be accompanied by anti-avoidance measures. I cannot give him any further information about the timetable other than what is already in the public domain. The anti-avoidance measures of which we spoken about many times, and to which we have a clear commitment, will be introduced in a timely manner to prevent businesses from moving goods via Northern Ireland in order to avoid required import formalities.

On farmers and biosecurity, appropriate authorities can use existing powers and those granted within the United Kingdom Internal Market Bill from the end of the transition period to manage and control the threat of disease, pest outbreaks and so forth in Northern Ireland and Great Britain. That will ensure that our high standards on food safety, plant and animal health,

and animal welfare and environmental protections, are maintained while ensuring trade from Northern Ireland to Great Britain can continue as now. Those risks will be managed as and when they arise and they should not be the basis on which we limit access for Northern Ireland businesses to their most important market.

The hon. Gentleman referred to the devolved Administrations, and of course many of the issues that we have dealt with throughout the whole process have been very complex in terms of what powers sit where, how organisations will operate and the frameworks that govern them. I reassure him that we are working very closely with those Administrations. I spend a lot of my time doing that—I have a quad with them this week—when we talk about the issues we are debating today. Of course their views are taken into consideration and account when it comes to shaping the regimes we will set up. They are heavily involved in the operational aspects, and now attend XO meetings when appropriate and of interest to them.

I must say a word in defence of the Chancellor of the Duchy Lancaster, because I think that he is Mr Standards, as he was when at Education or when at the Department for Environment, Food and Rural Affairs, when he worked for animal welfare standards, environmental and air quality standards, and he has been a champion of our retaining those standards throughout this process. A great deal is happening in the world on trade, with moves towards international standards, but fundamentally it comes back to the integrity of the United Kingdom, our country, and the standards that we wish to apply across a raft of sectors. That is incredibly important.

The regulations are simply a stopgap, another stepping-stone on the way to building new systems and regimes, and I am sure that it will not be long before my colleagues at the Treasury and elsewhere bring forward the other measures that the hon. Gentleman inquired about that will ensure that we can give businesses sight of and certainty over their future. I thank all members of the Committee for their attendance and assistance in considering the SI, which is fundamental to achieving that.

*Question put and agreed to.*

9.46 am

*Committee rose.*



