

2023 No. 956

EXITING THE EUROPEAN UNION

The Windsor Framework (Financial Assistance) (Marking of Retail Goods) Regulations 2023

<i>Made</i>	- - - -	<i>1st September 2023</i>
<i>Laid before Parliament</i>		<i>4th September 2023</i>
<i>Coming into force</i>	- -	<i>1st October 2023</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8C (1) and (2) of, and paragraph 21 of Schedule 7 to, of the European Union (Withdrawal) Act 2018(a).

In making these Regulations the Secretary of State has had special regard to the matters listed in section 46 of the United Kingdom Internal Market Act 2020(b).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Windsor Framework (Financial Assistance) (Marking of Retail Goods) Regulations 2023.

(2) These Regulations come into force on 1st October 2023.

(3) These Regulations extend to England and Wales, Scotland, and Northern Ireland.

Interpretation

2. In these Regulations—

“SPS Regulation” means Regulation (EU) 2023/1231 of the European Parliament and of the Council 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 opted for agricultural or forestry purposes, as well as non-commercial movements of certain pet animals into Northern Ireland(c);

“agreement” means an agreement between the Secretary of State and a person establishing the conditions under which the Secretary of State agrees to give financial assistance to that person under the financial assistance scheme;

“agreement holder” means a person who has entered into an agreement or—

(a) 2018 c. 16. Section 8C was inserted by section 21 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) (“the 2020 Act”) and amended by section 55(3) of the United Kingdom Internal Market Act 2020 (c. 27). Paragraph 21 of Schedule 7 was amended by paragraph 53(2) of Schedule 5 to the 2020 Act. Further to the Joint Declaration No. 1/2023 of the EU and the United Kingdom in the Joint Committee established by the Withdrawal Agreement of 24 March 2023, the Protocol (as amended by Joint Committee Decision No. 1/2023) is now known as the “Windsor Framework”.

(b) 2020 c. 27.

(c) OJ No L 165, 29.6.2023, p.103.

- (a) a personal representative of that person in the event of that person’s incapacity or death;
or
- (b) where applicable for the purposes of complying with or enforcing any obligation under these Regulations, an employee or agent of that person in so far as that employee or agent is acting or has acted for or on behalf of that person in connection with that agreement;

“financial assistance” means financial assistance given under the financial assistance scheme;

“financial assistance scheme” has the meaning given in regulation 3.

Secretary of State’s power to give financial assistance

3.—(1) These Regulations establish the Windsor Framework Transitional Labelling Financial Assistance Scheme (the “financial assistance scheme”).

(2) Under the financial assistance scheme, the Secretary of State may give or arrange for the giving of financial assistance to a person in respect of expenditure incurred or to be incurred in order to comply with the marking of retail goods requirements set out in Article 6(1)(a) of, and Annex IV to, the SPS Regulation.

(3) Financial assistance may be given by way of grant, loan or guarantee or in any other form.

(4) The Secretary of State may—

- (a) determine and publish eligibility criteria for financial assistance;
- (b) impose requirements on applicants for financial assistance, for example as to—
 - (i) the form and manner of an application, and
 - (ii) the information or evidence that is to be provided in support of an application;
- (c) take into account any further matters that the Secretary of State considers appropriate in deciding whether to make an offer of financial assistance, including the availability of funds;
- (d) make an offer of financial assistance subject to such conditions as the Secretary of State considers appropriate including requirements to—
 - (i) enter into an agreement with the Secretary of State, and
 - (ii) comply with the terms of such an agreement.

Delegation

4.—(1) The Secretary of State may delegate functions relating to the giving of financial assistance to any other person.

(2) Functions delegated under paragraph (1) may include—

- (a) the giving of guidance; and
- (b) the exercise of discretion.

(3) References to the Secretary of State in regulations 3(4) and 5 to 11 include a person to whom the Secretary of State has delegated functions under this regulation.

(4) Before delegating a function under paragraph (1) the Secretary of State must obtain the consent of—

- (a) the Scottish Ministers, if the function is being delegated as regards its exercise in relation to Scotland;
- (b) the Welsh Ministers, if the function is being delegated as regards its exercise in relation to Wales.

Provision of information

5. An agreement holder must supply, in such a manner and at such times as the Secretary of State may specify, such information or evidence as the Secretary of State may require for the purposes of:

- (a) checking whether the eligibility criteria for receipt of financial assistance are met; and
- (b) verifying compliance with conditions subject to which financial assistance is given.

Breaches of conditions for financial assistance

6.—(1) The Secretary of State may determine in relation to financial assistance given under these Regulations that a person given financial assistance—

- (a) has made an error in their application;
- (b) has at any time given false or misleading information to the Secretary of State;
- (c) has misused or misappropriated that financial assistance;
- (d) has not used that financial assistance for the purpose it was intended;
- (e) is in breach of any of the conditions subject to which financial assistance was given;
- (f) is in breach of any requirement to which they are subject under these Regulations.

(2) Before making a determination under paragraph (1) the Secretary of State must give an agreement holder—

- (a) a written explanation of the reasons for proposing to make the determination; and
- (b) the opportunity to make written representations within such period as the Secretary of State considers reasonable.

(3) The Secretary of State must consider any written representations received from the agreement holder within the period set under paragraph (2)(b) before making a determination.

Administrative error

7. The Secretary of State may determine in relation to financial assistance given under these Regulations that an administrative error was made resulting in a payment to which the agreement holder was not entitled.

Recovery of financial assistance and suspension or termination of the agreement

8.—(1) Where the Secretary of State makes a determination under regulation 6 or 7 the Secretary of State may also decide to—

- (a) withhold the whole or any part of any payment otherwise payable;
- (b) recover on demand the whole or any part of any payment already paid;
- (c) suspend or terminate the agreement or any part of the agreement and any entitlement to payment in respect of the unexpired period of the agreement or part of the agreement.

(2) The powers conferred on the Secretary of State by paragraph (1) are exercisable by serving notice on the agreement holder under regulation 9.

Notices

9. Where the Secretary of State makes a determination under regulation 6 or 7 the Secretary of State must—

- (a) give notice in writing to the agreement holder of that determination which must include the reasons for the determination;
- (b) set out whether any decision to withhold or recover payment or to suspend or terminate the agreement has also been made; and

- (c) inform that person of the right to request a reconsideration under regulation 10.

Reconsideration

10.—(1) An agreement holder may submit a request in writing to the Secretary of State for reconsideration of a determination notified to that person under regulation 9.

(2) A request under paragraph (1) must be received by the Secretary of State within thirty days of the determination being notified to that person.

(3) When reconsidering the original determination, the Secretary of State must give due regard to any additional information or evidence provided by the person making a request under paragraph (1).

(4) When a request has been made under paragraph (1), the Secretary of State must—

- (a) decide whether to uphold that determination or substitute a new one;
- (b) give notice in writing to that person, setting out—
 - (i) the Secretary of State’s decision; and
 - (ii) the reasons for that decision; and
- (c) inform that person of the right to appeal under regulation 11.

Appeals

11.—(1) A person who requested a reconsideration under regulation 10 (“the appellant”) may appeal in writing to the Secretary of State against a decision made under regulation 10 on any of the following grounds—

- (a) the decision was based on an error of fact;
- (b) the decision was wrong in law;
- (c) there has been a material procedural error.

(2) An appeal under paragraph (1) must be received by the Secretary of State within thirty days of the decision under regulation 10 being notified to the appellant.

(3) The Secretary of State must appoint a person or persons, up to a maximum of three (“the appointed person”) to consider an appeal under paragraph (1).

(4) The appointed person, upon considering an appeal under this regulation, must report in writing to the Secretary of State with conclusions on the appeal and a recommendation as to the manner in which the matter should be finally determined by the Secretary of State.

(5) Following receipt of a report under paragraph (4), the Secretary of State must make a final determination.

(6) When the Secretary of State makes a final determination under paragraph (5), the Secretary of State must give notice in writing to the appellant, within a reasonable period, setting out—

- (a) the final determination; and
- (b) the reasons for that final determination.

Mark Spencer
Minister of State

1st September 2023

Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 8C of the European Union (Withdrawal) Act 2018 (c. 16).

The Regulations establish a scheme under which financial assistance can be provided to support compliance with the marking of retail goods requirements in Regulation (EU) 2023/1231 of the

European Parliament and of the Council 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 opted for agricultural or forestry purposes, as well as non-commercial movements of certain pet animals into Northern Ireland, which come into force on 1st October 2023.

Regulation 3 provides a power for the Secretary of State to give financial assistance and establishes the Windsor Framework Transitional Labelling Financial Assistance Scheme (the financial assistance scheme).

Regulation 4 enables the Secretary of State to delegate functions in relation to giving financial assistance.

Regulation 5 imposes a duty on an agreement holder to provide information or evidence to the Secretary of State on request for the checking and monitoring of conditions imposed under the agreement for financial assistance.

Regulation 6 identifies the circumstances which amount to a breach of conditions for financial assistance. Regulation 7 allows the Secretary of State to determine financial assistance was given as the result of an administrative error.

Regulation 8 makes provision for recovery of financial assistance where there has been a breach or an administrative error and for the suspension or termination of the agreement in circumstances where there has been a breach of conditions for financial assistance or financial assistance was given as the result of an administrative error.

Regulation 9 makes provision for the service of notices.

Regulation 10 makes provision for a person to request that the Secretary of State reconsider a decision or determination under regulation 6 or 7. Regulation 11 makes provision for a subsequent appeal to the Secretary of State and for the process by which that appeal will be decided.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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