
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for observing and implementing relevant provisions of the Windsor Framework. The relevant provisions are Articles 5 (customs, movement of goods), 6 (protection of the UK internal market) and 7 (technical regulations, assessments, registrations, certificates, approvals and authorisations) and Annex 2 (provisions of Union law referred to in Article 5(4)). They include any other provisions in the Windsor Framework or other parts of the EU withdrawal agreement that apply in relation to those provisions.

Regulation 3 provides that when observing or implementing relevant provisions of the Windsor Framework, the functions of Northern Ireland departments must be exercised subject to the direction and control of the Secretary of State instead of Northern Ireland Ministers unless the Secretary of State decides otherwise. The Secretary of State may issue guidance about their arrangements for exercising direction and control and where they do, Northern Ireland departments are required to have regard to it (regulation 4).

Under regulation 5, a reference may be made (or defended) by either the Advocate General for Northern Ireland or the Attorney General for Northern Ireland to the High Court in Northern Ireland to determine any question about whether or not a function is being exercised for the purpose of observing or implementing a relevant provision of the Windsor Framework.

Regulation 6 confers concurrent powers on a Minister of the Crown. A Minister of the Crown will be able to do anything that a Northern Ireland Minister, department or competent authority is able to do for the purpose of observing or implementing a relevant provision of the Windsor Framework. A competent authority is a public body that has been designated as the competent authority in domestic law for the purpose of a provision of EU law.

Regulation 7 modifies section 44 of the Northern Ireland Act 1998 (c. 47). The Northern Ireland Assembly will not be able to require Ministers of the Crown or persons in Crown employment to attend before it to give evidence or produce documents where a function has been exercised subject to the direction and control of the Secretary of State under regulation 3 or by a Minister of the Crown under regulation 6. It makes similar modifications to section 11 of the Functioning of Government (Miscellaneous Provisions) Act (Northern Ireland) 2021 (c. 3 N.I.) so that Northern Ireland departments or Ministers are not required to provide information to the Assembly on those matters.

Regulation 7 also makes clear that where a department is required or empowered to disclose information because its functions are being exercised subject to the direction and control of the Secretary of State, it is not required to do so if that would breach the data protection legislation (as defined by reference to section 3(9) of the Data Protection Act 2018 (c. 12)).

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