

2024 No. 404

NORTHERN IRELAND

CONSTITUTIONAL LAW

The Windsor Framework (Implementation) Regulations 2024

<i>Made</i>	- - - -	<i>20th March 2024</i>
<i>Laid before Parliament</i>		<i>21st March 2024</i>
<i>Coming into force</i>		<i>12th April 2024</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, 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 (Implementation) Regulations 2024.

(2) They come into force on 12th April 2024.

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

Interpretation

2.—(1) In these Regulations—

“Executive Committee” means the Executive Committee of the Northern Ireland Assembly;

“functions” includes powers and duties;

“Minister” means the First Minister, the deputy First Minister or a Northern Ireland Minister and includes the First Minister and the deputy First Minister acting jointly;

“Windsor Framework” has the same meaning as in the European Union (Withdrawal Agreement) Act 2020(c).

(2) In these Regulations a reference to observing or implementing a relevant provision of the Windsor Framework is a reference to observing or implementing Article 5, 6 or 7 or Annex 2 of

(a) 2018 c. 16; section 8C was inserted by section 21 of the European Union (Withdrawal Agreement) Act 2020 (c. 1). Amendments were also made to paragraph 21 of Schedule 7 by that Act but they are not relevant to these Regulations.

(b) 2020 c. 27.

(c) 2020 c. 1. Windsor Framework is defined in section 39.

the Windsor Framework and any other provision of that Framework or any other part of the EU withdrawal agreement so far as it applies in relation to those Articles or that Annex.

(3) For the purposes of these Regulations, a function is exercised for the purpose of observing or implementing a relevant provision of the Windsor Framework if it is exercised for that purpose or an ancillary purpose.

(4) A function is exercised for an ancillary purpose if it is exercised for a purpose that is otherwise incidental to, or consequential on, the observance or implementation of a relevant provision of the Windsor Framework.

(5) In these Regulations a reference to the exercise of a function of a Northern Ireland department includes a proposed exercise of that function or a decision whether to exercise that function.

Implementing the Windsor Framework: direction and control

3.—(1) This regulation applies to the exercise of a function of a Northern Ireland department for the purpose of observing or implementing a relevant provision of the Windsor Framework.

(2) The function must be exercised subject to the direction and control of the Secretary of State (instead of the Minister in charge of the department).

(3) But the Secretary of State may decide not to exercise direction and control in respect of—

- (a) the exercise of a particular function, or
- (b) the exercise of a function in connection with a particular matter.

(4) Where the Secretary of State decides not to exercise direction and control in respect of a particular function or matter, paragraph (2) does not apply to the exercise of that function, or the exercise of a function in connection with that matter.

(5) Accordingly, where a function of a department is exercised subject to the direction and control of the Secretary of State as a result of this regulation, the Departments (Northern Ireland) Order 1999^(a) has effect in relation to the exercise of that function as if—

- (a) the references to “the Minister” in Article 4(1) and (2) and the second reference to “the Minister” in Article 7(1)(b) were references to the Secretary of State;
- (b) Articles 2(4), 4(2)(b), (3)(a) and (5), 6(2)(a) and the first reference to “the Minister” in Article 7(1)(b) were omitted.

(6) Paragraphs (3) and (4) are without prejudice to any subsequent decision that the exercise of a particular function, or the exercise of a function in connection with a particular matter, is to be subject to the direction and control of the Secretary of State (and that paragraph (2) applies).

(7) The functions of a department may be exercised subject to the direction and control of the Secretary of State in accordance with paragraph (2) irrespective of whether a matter connected with the exercise of those functions has been brought to the attention of, or discussed and agreed by, the Executive Committee.

Guidance for Northern Ireland departments

4.—(1) The Secretary of State may issue guidance for Northern Ireland departments about the Secretary of State’s arrangements for exercising direction and control under regulation 3.

(2) Guidance under paragraph (1) may include, in particular, guidance about—

- (a) the role of a Northern Ireland department to support and advise the Secretary of State when the Secretary of State is exercising direction and control;
- (b) the role of a Northern Ireland department to advise the Secretary of State about the functions that must or may be exercised for the purposes of observing or implementing a relevant provision of the Windsor Framework;

^(a) S.I. 1999/283 (N.I. 1) has been amended by the Departments Act (Northern Ireland) 2016 (c. 5).

- (c) the conduct of civil servants within a Northern Ireland department when the Secretary of State is exercising direction and control;
- (d) the types of functions or matters in respect of which the Secretary of State may decide not to exercise direction and control.

(3) A Northern Ireland department must have regard to any guidance for the time being in force when a function of the department is exercised subject to the direction and control of the Secretary of State.

- (4) The Secretary of State may revise or withdraw any guidance issued under this regulation.
- (5) The Secretary of State must publish any guidance issued or revised under this regulation.

Direction and control: referral to the High Court

5.—(1) This regulation applies when a question arises about whether a function of a Northern Ireland department is exercised for the purpose of observing or implementing a relevant provision of the Windsor Framework.

(2) Proceedings for the determination of that question by the High Court in Northern Ireland may be instituted or defended by the Advocate General for Northern Ireland or the Attorney General for Northern Ireland.

(3) This regulation does not limit any power to institute or defend proceedings exercisable apart from this regulation by any person.

Concurrent powers of Ministers of the Crown

6.—(1) A Minister of the Crown^(a) may do anything that a Minister, a Northern Ireland department or a relevant competent authority could do for the purpose of observing or implementing a relevant provision of the Windsor Framework.

(2) The fact that a matter has not been brought to the attention of, or discussed and agreed by, the Executive Committee is to be disregarded when determining what a Minister, a Northern Ireland department or a relevant competent authority could do for the purposes of paragraph (1).

(3) Any enactment^(b) or document is to have effect, so far as may be necessary for or in consequence of anything done by a Minister of the Crown in reliance on this regulation as if references to a Minister, a Northern Ireland department or a relevant competent authority (as the case may be) included, or were, references to the Minister of the Crown.

(4) Anything required or authorised by or under any enactment or document to be done to, or in relation to, a Minister, a Northern Ireland department or a relevant competent authority (as the case may be) in connection with anything done by a Minister of the Crown as a result of this regulation, is to be done instead to, or in relation to, that Minister of the Crown.

(5) This regulation does not apply to anything that a Minister could do by virtue of sections 52A to 52C of the Northern Ireland Act 1998 (attendance of Ministers at meetings of the North-South Ministerial Council and the British-Irish Council)^(c).

(6) In this regulation “relevant competent authority” means a public body in Northern Ireland that is the designated competent authority in domestic law for the purpose of a provision of EU law applied by the Windsor Framework.

Direction and control and concurrent powers: supplemental provision

7.—(1) Where the requirement in regulation 3 for a function of a Northern Ireland department to be exercised subject to the direction and control of the Secretary of State gives rise to a power or

(a) Minister of the Crown is defined for the purposes of the European Union (Withdrawal) Act 2018 (c. 16) (“EUWA”) by section 20 of that Act.

(b) Enactment is defined for the purposes of EUWA by section 20 of that Act.

(c) 1998 c. 47; sections 52A to 52C were substituted for section 52 by section 12 of the Northern Ireland (St Andrews Agreement) Act 2006 (c. 53).

requirement for the department to disclose information, the department is not authorised or required to disclose information if doing so would contravene the data protection legislation (but in determining whether a disclosure would do so, take account of that power or requirement).

(2) The power in section 44(1) of the Northern Ireland Act 1998 (power to call for witnesses and documents)(a) is not exercisable in relation to an excluded person in connection with the exercise of a function—

- (a) subject to the direction and control of the Secretary of State under regulation 3, or
- (b) by a Minister of the Crown under regulation 6.

(3) The duty in section 11 of the Functioning of Government (Miscellaneous Provisions) Act (Northern Ireland) 2021 (accountability to the Assembly: provision of information)(b) does not require a Minister or Northern Ireland department to report information to the Northern Ireland Assembly where that information relates to the exercise of a function—

- (a) subject to the direction and control of the Secretary of State under regulation 3, or
- (b) by a Minister of the Crown under regulation 6.

(4) In this regulation—

- (a) “data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act)(c);
- (b) “excluded person” means a person who is or has been—
 - (i) a Minister of the Crown, or
 - (ii) in Crown employment within the meaning of Article 236 of the Employment Rights (Northern Ireland) Order 1996(d).

20th March 2024

Steve Baker
Minister of State
Northern Ireland Office

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).

(a) Section 44 applies to the Executive Committee by virtue of section 28C of the Northern Ireland Act 1998 (c. 47). Section 20(2) of the Interpretation Act 1978 (c. 20) provides that a reference to an enactment (section 44) includes a reference to that enactment as applied by any other provision.

(b) 2021 c. 3 (N.I.).

(c) 2018 c. 12; section 3(9) has been amended by S.I. 2019/419.

(d) S.I. 1996/1919 (N.I. 16) amended by S.I. 2002/2836 (N.I. 2) and S.I. 2004/3078 (N.I. 19).

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.

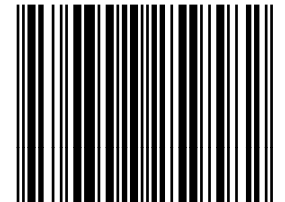
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