

Draft Regulations laid before Parliament under paragraph 8F(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2023 No.

**NORTHERN IRELAND
CONSTITUTIONAL LAW**

**The Windsor Framework (Democratic
Scrutiny) Regulations 2023**

Made - - - -

Coming into force - -

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(1).

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(2).

In accordance with paragraph 8F(1) of Schedule 7(3) to the European Union (Withdrawal) Act 2018, a draft of this instrument has been laid before and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Windsor Framework (Democratic Scrutiny) Regulations 2023.

(2) They come into force on the day after the day on which they are made.

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

(1) 2018 c. 16; section 8C was inserted by section 21 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) and paragraph 21 was amended by paragraphs 38 and 53 of Schedule 5 to that Act.

(2) 2020 c. 27.

(3) Paragraph 8F of Schedule 7 was inserted by paragraph 51 of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c. 1).

Amendment of the Northern Ireland Act 1998: Democratic Scrutiny

2.—(1) Part 5A of the Northern Ireland Act 1998⁽⁴⁾ (EU Withdrawal: Democratic Consent Process) is amended as follows.

(2) In the title of Part 5A, for “Democratic Consent Process” substitute “Democratic Consent and Scrutiny”.

(3) After section 56A (Democratic consent process) insert—

“56B. Application of EU acts

Schedule 6B (EU Withdrawal: Windsor Framework democratic scrutiny) has effect.”

(4) After Schedule 6A (EU Withdrawal: democratic consent process), insert Schedule 6B set out in the Schedule to these Regulations.

Date

Secretary of State
Northern Ireland Office

(4) 1998 c. 47; part 5A was inserted by [S.I. 2020/1500](#). There have been other amendments to the Act which are not relevant to these Regulations.

SCHEDULE

Regulation 2

“SCHEDULE 6B

Section 56B

EU WITHDRAWAL: WINDSOR FRAMEWORK DEMOCRATIC SCRUTINY

PART 1

General

Introduction and Interpretation

1.—(1) Part 2 of this Schedule establishes a new Windsor Framework Democratic Scrutiny Committee of the Assembly.

(2) Part 3 of this Schedule sets out, for the purposes of Article 13 of the Windsor Framework, the process by which members of the Assembly may seek to prevent the application of a replacement EU act under the Framework.

(3) Part 4 of this Schedule makes provision relating to the position of the United Kingdom in the Joint Committee with respect to the proposed application of EU acts under the Windsor Framework.

(4) To the extent that the standing orders of the Assembly are inconsistent with this Schedule, this Schedule (rather than the standing orders) is to have effect.

(5) For the purposes of this Schedule, a motion that is tabled and then withdrawn is to be regarded, at times after its withdrawal, as not having been tabled.

(6) In this Schedule—

“Article 13(3a) declaration” means the unilateral declaration by His Majesty’s Government concerning the involvement of the institutions of the 1998 Agreement as annexed to the decision of the Joint Committee which lays down arrangements relating to the Windsor Framework⁽⁵⁾;

“clerk to the Assembly” has the same meaning as in Schedule 6A;

“Committee” means the committee established by paragraph 2;

“Framework” means the Windsor Framework;

“Joint Committee” has the same meaning as in the European Union (Withdrawal) Act 2018;

“new EU act” means a new EU instrument which has been notified to the United Kingdom in accordance with Article 13(4) of the Windsor Framework;

“replacement EU act” means an EU instrument which amends or replaces any of the EU instruments referred to in the third subparagraph of Article 5(1) of the Windsor Framework, the first indent of heading 1 of Annex 2 to the Framework or headings 7 to 47 of Annex 2 to the Framework;

“scrutiny period” means the period of two months beginning with the day on which a replacement EU act is published;

“Windsor Framework” has the same meaning as in the joint declaration of the United Kingdom of Great Britain and Northern Ireland and the European Union in the Joint Committee which reflects the arrangements in the decision of that Joint Committee laying down the arrangements relating to the Windsor Framework.

(5) The unilateral declaration is annexed to the draft decision of the Withdrawal Agreement Joint Committee on laying down arrangements relating to the Windsor Framework. That document also includes the proposed amendments to the Northern Ireland Protocol, itself annexed to the EU-UK Withdrawal Agreement. The Windsor Framework documents can be found at [The Windsor Framework - GOV.UK \(www.gov.uk\)](https://www.gov.uk) or are available in hard copy from the Foreign, Commonwealth and Development Office, King Charles Street, London, SW1A 2AH.

PART 2

Windsor Framework Democratic Scrutiny Committee

Windsor Framework Democratic Scrutiny Committee

2. A committee of the Assembly, to be known as the Windsor Framework Democratic Scrutiny Committee, is established.

Purpose and functions of the Committee

3.—(1) The purpose of the Committee is to assist with the observation and implementation of Article 13(3a) and (4) of the Framework.

(2) In order to fulfil its purpose, the functions of the Committee include—

- (a) the examination and consideration of new EU acts and replacement EU acts,
- (b) the conduct of inquiries and publication of reports in relation to replacement EU acts,
- (c) engagement with businesses, civil society and others as appropriate in relation to replacement EU acts,
- (d) engagement with His Majesty’s Government in the United Kingdom in relation to replacement EU acts,
- (e) engagement with Ministers⁽⁶⁾ and Northern Ireland departments in relation to replacement EU acts,
- (f) the collation and publication of evidence collected as part of its other activities, and
- (g) dealing with other matters (including legislative proposals which may become new EU acts or replacement EU acts) which the Committee considers to be connected with its purpose or other functions.

Membership of the Committee

4. Membership of the Committee is to be determined in accordance with the standing orders of the Assembly which are to apply in the same way as they apply to a standing committee.

Powers of the Committee

5.—(1) Subject to sub-paragraph (2), the power in section 44(1) may be exercised by the Committee as if the Committee had been expressly authorised to do so in accordance with section 44(6).

(2) Subsection (2) of section 44 has effect in relation to the Committee as if for paragraphs (a) and (b) there were substituted “the purpose or functions of the Windsor Framework Democratic Scrutiny Committee”.

Notification of the Committee

6.—(1) The Committee may be notified under this paragraph if—

- (a) a new EU act or a replacement EU act has been proposed by the European Commission, or
- (b) a replacement EU act has been published by the European Union.

(2) A notification is made under sub-paragraph (1) if His Majesty’s government in the United Kingdom provides the notification to—

(6) “Minister” is defined in section 7(3).

- (a) the chair of the Committee,
- (b) the clerk of the Committee,
- (c) the clerk to the Assembly, or
- (d) the Presiding Officer.

Committee Monitoring

7.—(1) Following receipt of a notification under paragraph 6(1)(a), the Committee may monitor the progress of the proposed new EU act or replacement EU act and publish any interim reports which the Committee considers appropriate.

(2) If the Committee decides to monitor the progress of a proposed new EU act or replacement EU act in accordance with sub-paragraph (1), the Committee may also decide to hold an inquiry into that EU act.

Committee Inquiries: Initiation

8.—(1) Following receipt of a notification under paragraph 6(1)(b) the Committee must decide—

- (a) whether or not to hold an inquiry into the replacement EU act which was the subject of the notification, or
- (b) whether or not to continue an inquiry begun in accordance with paragraph 7(2) in relation to the replacement EU act which was the subject of the notification.

(2) In reaching a decision under sub-paragraph (1), the Committee—

- (a) must have regard to whether it appears likely that the replacement EU act—
 - (i) significantly differs (in whole or in part) from the content or scope of the EU instrument which it amends or replaces, and
 - (ii) would have a significant impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist, and
- (b) may have regard to any other matters the Committee considers appropriate.

(3) A decision under sub-paragraph (1) must be made no later than five working days after the day on which the notification is made.

(4) The Committee must publish any decision made in accordance with this paragraph.

(5) A failure to make a decision in accordance with this paragraph is to be treated as a decision not to hold an inquiry or not to continue an inquiry which had already begun, as the case may be.

Committee Inquiries: Procedure

9.—(1) A Committee inquiry held in accordance with paragraph 7 or 8 may consider any matters which the Committee considers appropriate.

(2) In conducting an inquiry, the Committee must seek substantive discussion and engagement with—

- (a) His Majesty's government in the United Kingdom,
- (b) a Minister or Northern Ireland department, and
- (c) to the extent the Committee considers appropriate, representatives of businesses and civil society affected by the new EU act or replacement EU act (or who would be so affected if the act enters into force).

(3) A Minister or Northern Ireland department must comply with any reasonable request for information made by the Committee which is relevant to an inquiry of that Committee.

Committee Inquiries: Reports

10.—(1) The Committee must publish a report of the conclusions of an inquiry into a replacement EU act no later than fifteen working days before the end of the scrutiny period that relates to that EU act.

(2) A report issued in accordance with sub-paragraph (1) may include any information which the Committee considers appropriate.

(3) The Committee must also publish the following no later than fifteen working days before the end of the scrutiny period—

- (a) minutes of all Committee meetings relevant to the inquiry,
- (b) minutes of any discussion or engagement conducted in accordance with paragraph 9(2), and
- (c) any other evidence collected in the course of the inquiry (whether or not such evidence was relied upon for the production of any report).

(4) Minutes and evidence published in accordance with sub-paragraph (3) may be subject to such redactions or omissions as the Committee considers appropriate.

PART 3

Procedure by which members of the Assembly may seek to prevent the application of a replacement EU act

Initiating the procedure to prevent the application of a replacement EU act

11.—(1) The process under this Part of this Schedule for members of the Assembly to seek to prevent a replacement EU act from applying under the Framework is initiated if the Presiding Officer is provided with a written notification which gives detailed reasons for seeking to prevent the application of that EU act with reference to the requirements in paragraph 1(c) of the Article 13(3a) declaration.

(2) A notification made under sub-paragraph (1) must be agreed to by no fewer than 30 members of the Assembly and these must include—

- (a) one member who belongs to a political party and one member who belongs to a different political party,
- (b) one member who belongs to a political party and one member who does not belong to a political party and did not belong to a political party when returned as a member of the Assembly, or
- (c) two members who do not belong to a political party and did not belong to a political party when returned as members of the Assembly,

but must not include the Presiding Officer or a deputy Presiding Officer.

(3) A notification under this paragraph must be provided to the Presiding Officer no later than ten working days before the end of the scrutiny period.

Time period for making the notification

12. Upon receipt of a notification which satisfies the conditions in paragraph 11(2) and (3), the Presiding Officer must provide that notification to the Secretary of State as soon as possible and no later than nine working days before the end of the scrutiny period.

Duty to publish the notification

13.—(1) The Presiding Officer must publish a notification provided to the Secretary of State in accordance with paragraph 12.

(2) A notification published in accordance with this paragraph is published under the Assembly’s authority for the purposes of section 50(1)(b).

Consideration of the validity of the notification

14.—(1) Before the end of the scrutiny period, the Secretary of State must accept a notification if the Secretary of State considers that it meets the requirements in—

- (a) paragraphs 11 to 13 of this Schedule,
- (b) Article 13(3a) of the Framework, and
- (c) the Article 13(3a) declaration.

(2) In reaching a decision under sub-paragraph (1), the possibility of the European Union taking remedial measures in accordance with Article 13(4) of the Framework is not a relevant consideration.

Duty to notify accepted notifications

15. Before the end of the scrutiny period, a Minister of the Crown must give the European Commission written notification in accordance with the Framework of any notification from members of the Assembly which has been accepted by the Secretary of State.

Duty to give reasons for a decision not to accept a notification

16.—(1) If the Secretary of State decides not to accept a notification, the Secretary of State must, without undue delay, provide written reasons to the Presiding Officer as to why it is considered that the requirements set out in paragraph 14(1)(a) to (c) have not been met.

(2) Such a decision does not prevent a separate notification from being made in relation to the same replacement EU act in accordance with this Part of this Schedule.

(3) The Presiding Officer must, as soon as possible, provide any reasons given in accordance with sub-paragraph (1) to the members who have agreed to the notification under paragraph 11.

PART 4

Ministerial consideration of new EU acts in the Joint Committee

Meaning of “applicability motion”

17. In this Part, an “applicability motion”, in relation to the application of a new EU act, means a motion of the Assembly tabled in this form—

“That [x] should be added to the Windsor Framework by the United Kingdom and the European Union within the Joint Committee in accordance with Article 13(4) of that Framework.”

where “[x]” is to be substituted with the title of the new EU act.

Restrictions relating to a decision to add new EU acts

18.—(1) A Minister of the Crown must not agree to the adoption of a decision by the Joint Committee to add a new EU act to the relevant annex in accordance with Article 13(4) of the Framework unless the Assembly has indicated support for the application of that EU act by passing an applicability motion.

(2) But the Minister of the Crown may agree to the adoption of such a decision if the Minister considers that—

- (a) there are exceptional circumstances that justify the adoption of the decision in the absence of an applicability motion having been passed, or
- (b) the new EU act would not create a new regulatory border between Great Britain and Northern Ireland.

(3) Before proceeding under sub-paragraph (2), the Minister of the Crown must make a statement to Parliament explaining why the Minister is of the opinion that the condition in either sub-paragraph (2)(a) or (2)(b) is met.

(4) Sub-paragraph (1) does not apply to a new EU act which was the subject of any European Commission proposal of 27 February 2023 relating to the Framework.

(5) In this paragraph—

“exceptional circumstances” includes circumstances in which the Assembly has, as its first business, failed to elect from among its members a Presiding Officer and deputies or there is no First Minister and deputy First Minister in office, and

“a new regulatory border” means regulatory requirements relating to the movement of goods that would—

- (a) materially divert trade, or
- (b) materially impair the free flow of goods.

Requirements relating to the applicability motion

19.—(1) No applicability motion may be tabled in relation to a new EU act until a notification has been made under sub-paragraph (2) in relation to the same new EU act.

(2) A notification under this paragraph may be made if a new EU act is being considered by the Joint Committee under Article 13(4) of the Framework.

(3) A notification is made under sub-paragraph (2) if His Majesty’s government in the United Kingdom provides the notification to—

- (a) the chair of the Committee,
- (b) the clerk of the Committee,
- (c) the clerk to the Assembly, or
- (d) the Presiding Officer.

(4) The First Minister and the deputy First Minister acting jointly may table an applicability motion within a period of two weeks beginning with the day on which a notification is made in accordance with sub-paragraph (2).

(5) No other member of the Assembly may table an applicability motion unless the two-week period expires with no such motion having been tabled.

(6) A vote on an applicability motion must be passed with cross-community support⁽⁷⁾ and must be passed within a period of five weeks beginning with the day on which the notification referred to in sub-paragraph (2) is made.

(7) If an applicability motion has been tabled, the Presiding Officer must select that motion for debate and a vote in the Assembly no later than the final sitting day of the Assembly before the end of the period referred to in sub-paragraph (6).

(7) “Cross-community support” is defined in section 4(5).

(8) A Minister of the Crown may extend any of the time periods referred to in this paragraph by providing written notification of such an extension to the Presiding Officer.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations insert a new Schedule into the Northern Ireland Act 1998 which implements those aspects of the Windsor Framework relating to the involvement of the institutions of the 1998 Agreement (the Belfast Agreement). Details of the Windsor Framework and the associated Unilateral Declaration of the United Kingdom on the involvement of the institutions of the 1998 Agreement are available at <https://www.gov.uk/government/publications/the-windsor-framework> or from the Foreign, Commonwealth and Development Office, King Charles Street, London, SW1A 2AH.

A full impact assessment has not been produced for this instrument. An explanatory memorandum has been published alongside this instrument at www.legislation.gov.uk.