

2024 No. 164

NORTHERN IRELAND

CONSTITUTIONAL LAW

**The Windsor Framework (Constitutional Status of Northern
Ireland) Regulations 2024**

Made - - - - *19th February 2024*

Coming into force - - *20th February 2024*

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(1) of the United Kingdom Internal Market Act 2020(b).

In accordance with paragraph 8F(1) of Schedule 7(c) 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 (Constitutional Status of Northern Ireland) Regulations 2024.

(2) They come into force on the day after—

- (a) the first day on which there is an Executive, if there is not an Executive on the day on which they are made, or
- (b) the day on which they are made, if there is an Executive on that day.

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

(4) For the purposes of paragraph (2) there is an Executive if the offices of First Minister and deputy First Minister and those to be held by the other Northern Ireland Ministers are all filled.

(a) 2018 c. 16; section 8C was inserted by section 21 of the European Union (Withdrawal Agreement) Act 2020 (c. 1). There have been other amendments to that Act, including amendments to paragraph 21 of Schedule 7, which are not relevant to these Regulations.

(b) 2020 c. 27.

(c) 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 European Union (Withdrawal Agreement) Act 2020

- 2.—(1) The European Union (Withdrawal Agreement) Act 2020(a) is amended as follows.
- (2) In section 38 (Parliamentary sovereignty)—
- (a) in the heading, at the end, insert “and the constitutional status of Northern Ireland”;
 - (b) in subsection (2) after “withdrawal agreement”, in both places those words occur in parenthesis, insert “(including the Windsor Framework)”;
 - (c) after subsection (3), insert—

“(4) The Windsor Framework is without prejudice to these matters (in particular), which are recognised and continue—

 - (a) the constitutional status of Northern Ireland as part of the United Kingdom,
 - (b) Northern Ireland’s part in the economy of the United Kingdom, including its customs territory and internal market,
 - (c) the power of the Parliament of the United Kingdom to make laws for Northern Ireland, and
 - (d) the vesting of executive power in Northern Ireland in His Majesty.
- (5) The enactments which make provision—
- (a) about the constitutional status of Northern Ireland, the power of the Parliament of the United Kingdom to make laws for Northern Ireland and the vesting of executive power in Northern Ireland include—
 - (i) the Northern Ireland Act 1998(b) (section 1 of which relates to the principle of consent), and
 - (ii) the Union with Ireland Act 1800(c) and the Act of Union (Ireland) 1800(d), and
 - (b) about Northern Ireland’s part in the economy of the United Kingdom, including its customs territory and internal market, include the United Kingdom Internal Market Act 2020.”
- (3) After section 38 insert—

“38A Prohibition of certain Northern Ireland-related agreements

(1) His Majesty’s Government must not ratify a Northern Ireland-related agreement with the European Union that would create a new regulatory border between Great Britain and Northern Ireland.

(2) Before His Majesty’s Government ratifies a Northern Ireland-related agreement with the European Union that would not create a new regulatory border between Great Britain and Northern Ireland, a Minister of the Crown must lay before Parliament a statement explaining why the agreement does not create a new regulatory border.

(3) In this section—

“a new regulatory border” has the meaning given in paragraph 18(5) of Schedule 6B(e) to the Northern Ireland Act 1998;

“a Northern Ireland-related agreement with the European Union” means a written agreement that—

- (a) is between the United Kingdom, of the one part, and the European Union or the European Union and its Member States, of the other part, including—

(a) 2020 c. 1.
(b) 1998 c. 47.
(c) 1800 c. 67.
(d) 1800 c. 38 (Ir.)
(e) Schedule 6B was inserted by S.I. 2024/118.

- (i) a supplementing agreement of the kind referred to in Article 2 of the Trade and Cooperation Agreement, and
- (ii) an agreement of the kind referred to in Article 13(8) of the Windsor Framework,
- (b) is binding under international law,
- (c) supersedes (in whole or in part) or supplements the Windsor Framework, and
- (d) relates to any matter to which the Windsor Framework relates (whether or not it also relates to any other matter), including—
 - (i) customs matters and matters relating to the customs territory of the United Kingdom,
 - (ii) the movement of goods into Northern Ireland,
 - (iii) the United Kingdom internal market for goods and services,
 - (iv) technical regulations, assessments, registrations, certificates, approvals and authorisations, and
 - (v) VAT and excise;

“ratify” has the meaning given in s 25(3) of the Constitutional Reform and Governance Act 2010(a);

“Trade and Cooperation Agreement” has the meaning given in section 37(1) of the European Union (Future Relationship) Act 2020(b).”

(4) In section 39(1)—

- (a) in the definition of “withdrawal agreement”, for the words from “(as” to “it)” substitute “as modified in relation to the Windsor Framework (and as otherwise modified from time to time in accordance with any provision of that agreement)”, and
- (b) at the appropriate place, insert—
 - ““Windsor Framework” means the part of the withdrawal agreement known as the Windsor Framework by virtue of Joint Declaration No. 1/2023 of 24 March 2023 made between the EU and the United Kingdom in the Joint Committee established by the withdrawal agreement;”.

Amendment of the European Union (Withdrawal) Act 2018

3.—(1) The European Union (Withdrawal) Act 2018(c) is amended as follows.

(2) In section 7A (General implementation of remainder of withdrawal agreement), after subsection (3) insert—

“(3A) The following provide for the application in Northern Ireland of EU law relating to the trade in goods necessary for the functioning of the Windsor Framework in the withdrawal agreement to be subject to democratic consent and scrutiny—

- (a) Articles 13 and 18 of that Framework, and
- (b) Part 5A(d) of the Northern Ireland Act 1998.”

(3) After section 13B(e) (Certain dispute procedures under withdrawal agreement) insert—

(a) 2010 c. 25.
 (b) 2020 c. 29.
 (c) 2018 c. 16.
 (d) Part 5A gives effect to Schedule 6A and Schedule 6B and was inserted by S.I. 2020/1500. Part 5A was amended by S.I. 2024/118 to insert section 56B, which gives effect to Schedule 6B. There have been other amendments to the Act which are not relevant to these Regulations.
 (e) Section 13B was inserted by the European Union (Withdrawal Agreement) Act 2020 (c. 1), sections 30 and 42(7) (with section 38(3) and Schedule 5, paragraph 66).

“13C Bills affecting trade between Northern Ireland and other parts of the United Kingdom

(1) This section applies where a Minister of the Crown in charge of a Bill in either House of Parliament is of the view that the Bill as introduced into that House contains provision which, if enacted, would affect trade between Northern Ireland and other parts of the United Kingdom.

(2) The Minister in charge of the Bill must, before Second Reading of the Bill in the House in question, make—

- (a) a statement to the effect that in the Minister’s view the Bill does not contain provision which, if enacted, would have a significant adverse effect on trade between Northern Ireland and the rest of the United Kingdom, or
- (b) a statement to the effect that the Minister is unable to make such a statement but His Majesty’s Government nevertheless wishes the House to proceed with the Bill.

(3) A statement under this section must be in writing and be published in such manner as the Minister considers appropriate.”

Amendment of the Northern Ireland Act 1998

4.—(1) The Northern Ireland Act 1998 is amended as follows.

(2) In Schedule 6A (Democratic consent process)(a), in paragraph 21 (Independent review into the functioning of the Windsor Framework)—

- (a) in sub-paragraph (2), at the beginning, for “The” substitute “Within one month of receiving the notification, the”;
- (b) after sub-paragraph (2) insert—

“(2A) The review may include consideration of any effect of the Windsor Framework in the withdrawal agreement on—

- (a) the constitutional status of Northern Ireland, and
- (b) the operation of the single market in goods and services between Northern Ireland and the rest of the United Kingdom.

(2B) The person commissioned by the Secretary of State to carry out the review must provide to the Secretary of State a report of its conclusions no later than six months after having been commissioned.

(2C) Upon receipt of a report by the Secretary of State in accordance with sub-paragraph (2B), a Minister of the Crown must—

- (a) lay a copy of that report before Parliament, and
- (b) transmit a copy of that report to the Presiding Officer.

(2D) The Presiding Officer must lay before the Assembly a copy of any report received in accordance with sub-paragraph (2C)(b).

(2E) A Minister of the Crown must raise in the Joint Committee any issues raised or recommendations made by a report received by the Secretary of State in accordance with sub-paragraph (2B).

(2F) No later than six months after receiving the report, the Secretary of State must publish a written response to any recommendations made by that report.

(2G) A response published in accordance with sub-paragraph (2F) must contain information about the Secretary of State’s response to any representations made about the report—

- (a) by either House of Parliament or a committee thereof, or

(a) Schedule 6A was inserted by S.I. 2020/1500, regulations 1(2) and 2(3).

- (b) by the Assembly.”;
- (c) in sub-paragraph (3), for “this paragraph” substitute “sub-paragraph (1)”;
- (d) after sub-paragraph (3), insert—
 - “(4) In this paragraph, “Joint Committee” has the same meaning as in the European Union (Withdrawal) Act 2018.”

19th February 2024

Steve Baker
Minister of State
Northern Ireland Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the Windsor Framework and related constitutional matters.

Regulation 2 provides for amendment to the European Union (Withdrawal Agreement) Act 2020. Section 38 of that Act is amended to insert provision about the Windsor Framework with reference to existing constitutional arrangements, including the constitutional status of Northern Ireland as part of the United Kingdom, the United Kingdom’s internal market, the power of the Parliament of the United Kingdom to legislate for Northern Ireland and executive power in Northern Ireland. A new section 38A is inserted to provide for a restriction on the making of certain Northern Ireland-related agreements with the European Union where they cover related subject matter to the subject matter of the Windsor Framework. This regulation also updates the definition of “withdrawal agreement” in section 39 of the same Act to reflect the agreement of the Windsor Framework. “withdrawal agreement” is an expression defined in Schedule 1 to the Interpretation Act 1978.

Regulation 3 provides for amendment to the European Union (Withdrawal) Act 2018, including an amendment to section 7A (General implementation of remainder of withdrawal agreement). Section 7A is the “conduit pipe” through which certain EU law applied by the withdrawal agreement flows into domestic law. The amendment made by this regulation clarifies that, under the provisions of the Windsor Framework, there are democratic scrutiny and consent mechanisms that apply to that EU law. A new section 13C is also inserted, making provision for statements to be made in relation to Bills that affect trade between Northern Ireland and another part of the United Kingdom.

Regulation 4 amends Schedule 6A to the Northern Ireland Act 1998 to make provision about the independent review aspect of the democratic consent arrangements arising under the Windsor Framework.

Details of the Windsor Framework 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.

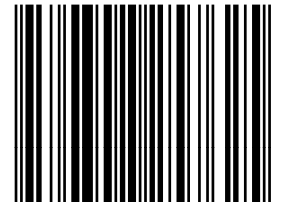
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