EXPLANATORY MEMORANDUM TO

THE WITHDRAWAL AGREEMENT (WINDSOR FRAMEWORK AND GOVERNANCE) (AMENDMENT) REGULATIONS 2026

2026 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Nick Thomas-Symonds, Minister for the Cabinet Office at the Cabinet Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Paul Flynn, Deputy Director Windsor Framework at the Cabinet Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Edmund Ramsden at the Cabinet Office can be contacted by email at the following address with any queries regarding the instrument: wftf-strategy@cabinetoffice.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument introduces procedural changes to the arrangements for scrutinising law that is applicable in Northern Ireland under the Windsor Framework within the Northern Ireland Assembly. It achieves this by amending Schedule 6B to the Northern Ireland Act 1998 to provide greater flexibility to the Northern Ireland Assembly's Windsor Framework Democratic Scrutiny Committee. It also clarifies the statutory obligation for Northern Ireland Ministers or Northern Ireland departments to comply with reasonable information requests made by the Committee.

4.2 The instrument updates outdated statutory references from the Northern Ireland Protocol to the Windsor Framework within the Northern Ireland Act 1998 and the European Union (Withdrawal) Act 2018.

4.3 The instrument amends the European Union (Withdrawal) Act 2018 by omitting section 15C, thereby removing the restriction that prevents the United Kingdom co-chair from engaging in the Withdrawal Agreement Joint Committee using written procedure to adopt decisions or recommendations such as those in relation to the Windsor Framework.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument is England and Wales, Scotland and Northern Ireland.

4.5 The territorial application of this instrument is the whole of the United Kingdom.

5. Policy Context

What is being done and why?

5.1 In response to recommendations made by the Independent Review of the Windsor Framework, ('The Review'), the Government committed to providing greater flexibility to the NI Assembly's Democratic Scrutiny Committee in conducting examination and consideration of EU legislation relevant to Northern Ireland. These changes to Schedule 6B to the Northern Ireland Act 1998 are aimed at providing the Committee greater flexibility in scrutinising EU legislation within the two month window following the publication of a relevant EU act, if it wishes to use it.

5.2 The Review also made recommendations on how Northern Ireland departments should be empowered to provide evidence and support the Committee. In response, changes have been made to Schedule 6B to strengthen the commitment of Northern Ireland departments to provide evidence to the Committee on relevant EU files.

5.3 The instrument amends outdated references within the Northern Ireland Act 1998 and the European Union (Withdrawal) Act 2018 so that these now refer to the Windsor Framework, in accordance with Decision 1/2023 laying down arrangements relating to the Windsor Framework and Joint Declaration of the UK and EU in the Joint Committee No 1/2023.

5.4 Further, the instrument omits section 15C of the European Union (Withdrawal) Act 2018, to allow the UK co-chair to agree that the Withdrawal Agreement Joint Committee may adopt decisions or recommendations by written procedure. This provision is made to facilitate decision making between the co-chairs on time-sensitive issues during the period in between formal meetings, noting the bulk of decisions at the Joint Committee relate to the Windsor Framework.

What was the previous policy, how is this different?

5.5 Currently, the NI Assembly's Windsor Framework Democratic Scrutiny Committee has five working days following a relevant notification from the Government to vote on whether to hold an inquiry into a replacement EU act. If an inquiry is held, then a report must be produced no later than fifteen working days before the end of the two month period, which begins the day the EU publishes the act in its Official Journal. This instrument expands the inquiry decision window to ten working days and alters the publication deadline for inquiry reports to no later than 12 working days before the end of the scrutiny period.

5.6 Northern Ireland departments and Ministers are under a legal duty to comply with a reasonable request for information from the Democratic Scrutiny Committee where that is relevant to an inquiry that it has conducted. This instrument clarifies that such a request should not be regarded as unreasonable solely on the ground that a Northern Ireland department or Minister lacks primary responsibility for the implementation or enforcement of the new EU act or the replacement EU act in question.

5.7 Currently, section 15C of the European Union (Withdrawal) Act 2018 prohibits the United Kingdom co-chair from consenting to the Withdrawal Agreement Joint Committee using written procedure, meaning decisions or recommendations must be adopted during a formal meeting of the Joint Committee. This instrument omits section 15C to, allowing the Joint Committee to adopt joint decisions or recommendations via written procedures when mutually agreed by both co-chairs as per Rule 9 of Annex VIII of the Withdrawal Agreement.

6. Legislative and Legal Context

How has the law changed?

6.1 The law changes by omitting section 15C of the European Union (Withdrawal) Act 2018 and textually amending paragraphs 8 and 10 of Schedule 6B to the Northern Ireland Act 1998.

6.2 Paragraph 9(3A) is inserted into Schedule 6B to the Northern Ireland Act 1998 to clearly reflect the interests of devolved Departments in Northern Ireland in all EU legislation relevant to Northern Ireland and improving the support provided by those departments to the Committee.

6.3 Changes are made to both the European Union (Withdrawal) Act 2018 and the Northern Ireland Act 1998 to update references to the Northern Ireland Protocol to the Windsor Framework.

Why was this approach taken to change the law?

6.4 This approach uses the powers under section 8C(1) and (2) of the European Union (Withdrawal) Act 2018 to modify primary legislation, which is the relevant provision for delegated legislation to be made to implement the Windsor Framework and to deal with matters arising out of or related to it.

7. Consultation

Summary of consultation outcome and methodology

7.1 On 9 January 2025, the Secretary of State for Northern Ireland, The Rt Hon Hilary Benn MP, commissioned The Rt Hon Lord Murphy of Torfaen to conduct an independent review into the functioning of the Windsor Framework. The Review's findings were published and laid before Parliament on 4 September 2025.

7.2 In the Government's response to the Independent Review, published and laid in both Libraries of the Houses of Parliament on 16 December 2025, it supported the recommendations of the Review (Written Ministerial Statement HCWS1185). This regulation specifically seeks to meet the commitment set out in paragraph 7 of the Independent Review response of providing the Northern Ireland Assembly's Democratic Scrutiny Committee with flexibility.

8. Applicable Guidance

8.1 No public guidance is being provided because the instrument primarily modifies existing administrative processes and procedures.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because it relates to democratic scrutiny and governance and, as with all democratic processes, it is not possible to hypothetically estimate future potential decisions made by democratically elected representatives.

Impact on businesses, charities and voluntary bodies

9.2 The impact on business, charities or voluntary bodies is not possible to hypothetically estimate, as it will hinge around the future potential decisions made by democratically elected representatives.

9.3 The impact on the public sector is not possible to hypothetically estimate, as it will hinge around the future potential decisions made by democratically elected representatives.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Withdrawal Agreement, of which the Windsor Framework is part, is a continuing international obligation to which the United Kingdom is the contracting state.

10.2 For these reasons, and as this instrument is only made under the European Union (Withdrawal) Act 2018, no review clause is required.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 In making these Regulations, the Minister for the Cabinet Office has had special regard to the matters listed in section 46 of the United Kingdom Internal Market Act 2020.

12. European Convention on Human Rights

12.1 The Minister for the Cabinet Office has made the following statement regarding Human Rights:

"In my view the provisions of the Withdrawal Agreement (Windsor Framework and Governance) (Amendment) Regulations 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is made under section 8C of the European Union (Withdrawal) Act 2018 and therefore relates to the withdrawal of the United Kingdom from the European Union.

13.2 This instrument does not trigger the statement requirements under the European Union (Withdrawal) Act 2018.