EXPLANATORY MEMORANDUM TO

THE WINDSOR FRAMEWORK (IMPLEMENTATION) REGULATIONS 2024

2024 No. 404

1. Introduction

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

2. Declaration

2.1 The Rt Hon Chris Heaton Harris MP, Secretary of State at the Northern Ireland Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Paul Flynn, Deputy Director for Strategy, Governance and Internal Market (Windsor Framework) at the Cabinet Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Theo Bonds, Head of Strategy & Governance (Windsor Framework) at the Cabinet Office telephone: 07902 236 591 or email: Theo.Bonds@cabinetoffice.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The instrument requires Northern Ireland departments to exercise their functions in relation to the implementation and observance of Articles 5-7 and Annex 2 of the Windsor Framework (the 'relevant provisions') subject to the direction and control of the Secretary of State. The instrument provides that the Secretary of State may decide not to exercise direction and control in respect of particular function(s) or matter(s).

4.2 The instrument confers a power on the Secretary of State to issue statutory guidance about the arrangements for exercising direction and control, which Northern Ireland departments would be required to have regard to.

4.3 In addition, the instrument confers concurrent powers on Ministers of the Crown so they can do anything that a Northern Ireland Minister, departments or competent authority could do for the purposes of implementing or observing the relevant provisions.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Northern Ireland only.

5. Policy Context

What is being done and why?

5.1 In 2020, the United Kingdom left the European Union and the terms of its departure were agreed and set out in the Withdrawal Agreement. The arrangements relating to Northern Ireland and Ireland were set out in a Protocol which formed part of that Agreement. Legislative provision was made by Parliament in reflection of these international obligations, including through the European Union (Withdrawal Agreement) Act 2020. On 24 March 2023, Decision No 1/2023 of the Joint Committee laid down arrangements relating to the Windsor Framework [2023/819], which now apply in place of those in the old Protocol.

5.2 The Windsor Framework is a negotiated agreement that the Government continues to implement. These Regulations are made under section 8C of the European Union (Withdrawal) Act 2018 and make provision for the implementation and observance of the relevant provisions of the Windsor Framework.

5.3 In January 2024, the Government made a series of commitments in the *Safeguarding the Union* command paper [CP 1021]. These included providing legal direction to certain public authorities over the implementation and observance of the Windsor Framework and in connection to the UK internal market.

5.4 The Government considers that the powers contained within the Regulations are necessary to deliver on those interlinked commitments.

What was the previous policy, how is this different?

5.5 Pursuant to Article 4 of the Departments (Northern Ireland) Order 1999, a Northern Ireland department must exercise functions conferred on it subject to the direction and control of the Minister in charge of the department. These Regulations will change that position where functions are exercised for the purpose of observing or implementing the relevant provisions of the Windsor Framework, unless the Secretary of State's discretion not to exercise direction and control is exercised.

5.6 They will also confer concurrent powers on Ministers of the Crown, so they may do anything that a Northern Ireland Minister, department or competent authority could do for the purpose of observing or implementing the relevant provisions of the Windsor Framework.

6. Legislative and Legal Context

How has the law changed?

6.1 The Northern Ireland Act 1998 makes provision for the government of Northern Ireland for the purpose of implementing the agreement reached at multi-party talks on Northern Ireland as part of the Belfast (Good Friday) Agreement. In particular, it makes provision for executive and legislative competence in Northern Ireland.

6.2 The Northern Ireland Assembly has legislative competence in respect of matters that are transferred or reserved - that is to say, they are not excepted by Schedule 2 to the Northern Ireland Act 1998. That is without prejudice to Parliament's ability to legislate in respect of Northern Ireland on any matter.

6.3 By virtue of section 22 (and reflecting the Belfast (Good Friday) Agreement), executive powers in respect of transferred matters may be conferred on Northern Ireland departments or Ministers. Pursuant to Article 4 of the Departments (Northern Ireland) Order 1999 (SI 1999/283), where functions are conferred on a department

they must at all times be exercised subject to the direction and control of the Minister in charge of the department. Executive functions in respect of transferred matters are not exercisable by UK Ministers unless powers are specifically conferred on them. This was recently done, for example, by sections 6 and 7 of the Identity and Language (Northern Ireland) Act 2022.

6.4 The Regulations provide that Northern Ireland departments will be required to exercise their functions subject to the direction and control of the Secretary of State where it is for the purpose of observing or implementing the relevant provisions of the Windsor Framework. Concurrent powers to Northern Ireland Ministers, departments and competent authorities will be conferred on Ministers of the Crown, in relation to the purposes of observing or implementing the relevant provisions of the Windsor Framework.

Why was this approach taken to change the law?

6.5 The Secretary of State and Ministers of the Crown do not have certain powers to secure the implementation and observation of the relevant provisions of the Windsor Framework through and by Northern Ireland public authorities including Northern Ireland departments. Amending the law is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

The Government notified the Northern Ireland parties and Northern Ireland departments ahead of making and laying this instrument and consulted with the relevant Ministers.

8. Applicable Guidance

8.1 The guidance for these regulations will be issued shortly after the date that this instrument comes into force.

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 this relates to the implementation of an existing Government commitment.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Windsor Framework is a continuing international obligation to which the United Kingdom is the contracting state.

10.2 Regulation 3 provides that the Secretary of State may decide not to exercise direction and control for the purposes of the observance or implementation of relevant

provisions of the Windsor Framework. The Secretary of State will evaluate whether it is necessary that they do exercise direction and control, with a view to ensuring that relevant provisions of the Windsor Framework are complied with and the desirability of transferred matters remaining in the realm of Northern Ireland Ministers when they are in office.

10.3 The instrument does not include a statutory review clause, though statutory guidance published in accordance with the power contained within Regulation 4 may set out further arrangements for the monitoring and reviewing of the powers contained within this legislation.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to the made negative procedure and does not amend primary legislation, no statement is required.

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.