

Windsor Framework (Implementation) Regulations 2024
Statutory guidance

- 1.1. This guidance is issued by the Secretary of State for Northern Ireland pursuant to regulation 4 of the Windsor Framework (Implementation) Regulations 2024 (the 'Regulations'). It will be kept under review and amended as needed.
- 1.2. The Regulations confer powers upon the Secretary of State in relation to Articles 5-7 and Annex 2 (the 'relevant provisions') of the Windsor Framework. This guidance includes details on the working arrangements between Northern Ireland departments and UK Government departments to support and advise the Secretary of State in exercising the powers under the Regulations.
- 1.3. The Secretary of State anticipates exercising these powers only to the extent necessary to support the operation of the Windsor Framework, including relevant commitments of the *Safeguarding the Union* command paper.
- 1.4. The Secretary of State for Northern Ireland retains overall responsibility for the operation of the Regulations. They will review the operation of these Regulations two years after they have come into force and set out any changes they propose to make to either this guidance or to the Regulations to the First Minister, deputy First Minister and other Northern Ireland Ministers.

2. Exercise of direction and control

- 2.1. Except where specified in this guidance or unless advised otherwise by the Secretary of State for Northern Ireland, references to the Secretary of State in this guidance should usually be construed by the relevant Northern Ireland department as a reference to the relevant Secretary of State in the UK Government. Consistent with their overall responsibility for the Regulations, the Secretary of State for Northern Ireland will ensure the powers within them are exercised in a consistent manner.
- 2.2. Under the terms of the Regulations, the Secretary of State may decide not to exercise direction and control in respect of particular functions or matters. In accordance with regulation 4(2)(d), the Secretary of State intends to use their discretion under regulation 3(3) to not exercise direction and control as provided for in this guidance.
- 2.3. The Secretary of State's intention is that they intend to exercise direction and control, in areas not already reserved or excepted and therefore already being operated by the UK Government, only with respect to the following areas:
 - 2.3.1. The delivery (including legislative delivery as required on matters where direction and control is being exercised) of the arrangements adopted between the UK and EU as set out in the Windsor Framework, as agreed at the UK-EU Joint Committee on 24 March 2023.

- 2.3.2. The operation of arrangements under the Windsor Framework concerning the movement of goods between Great Britain and Northern Ireland, or for direct movements into Northern Ireland, and incidental matters thereto. That would encompass arrangements at Northern Ireland ports and airports, the oversight and administration of relevant schemes to support internal UK trade established by the UK Government, any further legislation related to any of those elements, and any policy developments that would impact on GB-NI movements.
- 2.4. On the basis of paragraph 2.3, a mapping exercise has been conducted between UK Government and Northern Ireland departments to identify matters where the Secretary of State would apply their discretion not to exercise direction and control. The Secretary of State for Northern Ireland will keep these arrangements for the exercise of discretion under review.
- 2.5. The Secretary of State will also exercise discretion to not exercise direction and control in relation to the monitoring of regulatory proposals for changes to the law that may apply under Annex II of the Windsor Framework, prior to their adoption by the European Commission. In those cases, the Secretary of State will expect that Northern Ireland departments will continue working closely with UK Government departments and other relevant stakeholders. This includes the provision to the UK Government of relevant supporting information and analysis to assess the impacts of a proposed regulation if applied in Northern Ireland.
- 2.6. Where the Secretary of State is exercising the powers under regulation 3 in respect of a matter but there are associated functions conferred on a Northern Ireland Minister by name (for example the exercise of certain functions under the Freedom of Information Act 2000), the Secretary of State may decide to exercise their concurrent powers under regulation 6 in respect of those associated functions.

3. Working arrangements

Provision of advice to the Secretary of State

- 3.1. The Secretary of State will expect Northern Ireland departments to assess and provide timely advice on any functions that Northern Ireland departments need to exercise subject to the Secretary of State's direction and control.
- 3.2. Northern Ireland departments should ensure that there are appropriate arrangements in place to ensure that areas or subjects on which advice is required are set out to the relevant Secretary of State as early as possible. This should be as part of a process of regular engagement and cooperation with counterpart UK Government departments on policy and operational issues where the Secretary of State is exercising direction and control.

- 3.3. Information provided by Northern Ireland departments to the Secretary of State in giving advice should not be provided to Northern Ireland Ministers if that information attracts legal privilege; was provided in confidence or otherwise engages commercial confidentiality; or if the Secretary of State has, in exercising direction and control, given a direction in respect of particular information that should not be shared. Where information is legally privileged, its existence or the fact that advice has or has not been given to the Secretary of State may not be disclosed.
- 3.4. Where information is provided to a Northern Ireland Minister that relates to the Secretary of State's direction and control, and that information is subject to a transparency request, such as under the Freedom of Information Act 2000, the Secretary of State exercises direction and control in relation to the determination of requests for access to that information.

Implementation functions

- 3.5. Where a Northern Ireland department is exercising functions subject to the direction and control of the Secretary of State under regulation 3, they should comply with decisions made by the Secretary of State as they would with those made by Northern Ireland Ministers. This means:
- 3.5.1. In circumstances where a Northern Ireland department would normally either inform or seek a decision from their Northern Ireland Minister on a given matter, they should advise and seek decisions from the Secretary of State in the same way and in good time.
 - 3.5.2. In circumstances where a Northern Ireland department would not normally either inform their Northern Ireland Minister, or seek decisions on a given matter, they should not normally do so from the Secretary of State.
- 3.6. The Secretary of State may set out directions on the process for decision-making to be followed. Consistently with the Departments (Northern Ireland) Order 1999, Northern Ireland departments must comply with any directions given to them by the Secretary of State.

Expert advisers

- 3.7. Northern Ireland departments will receive scientific and other specialist input from their own expert advisers on a range of policy matters. This may include (but is not limited to) advice from those holding the positions of Chief Scientific Adviser, Chief Veterinary Officer, and Chief Plant Health Officer. This is not affected by this guidance.
- 3.8. The Secretary of State will ensure that, within the areas in which direction and control is exercised, they will have full regard to the professional decision-making of expert advisers on the front line.

Engagement between the Secretary of State and Northern Ireland Ministers

- 3.9. The Secretary of State exercising functions in respect of a specific Northern Ireland department shall seek to engage regularly with the Northern Ireland Minister in charge of that Department to share information and to develop a shared understanding of each other's priorities in the exercise of their respective functions. This engagement should include regular meetings and the sharing of such information as they consider useful to enable a constructive relationship, having regard to the good operation of the arrangements under paragraph 3.3.
- 3.10. The Secretary of State for Northern Ireland will engage regularly with the First Minister and deputy First Minister on the operation of these Regulations.

Legal issues

- 3.11. Where the Secretary of State is exercising direction and control, they will from time to time require legal advice to be provided to them by the Departmental Solicitor's Office (DSO). DSO will ensure arrangements for legal privilege are maintained with respect to that advice.
- 3.12. The Government has made commitments that it would not normally make certain secondary legislation in devolved areas relating to the UK's withdrawal from the EU without the agreement of the devolved governments. Where the Secretary of State is exercising direction and control over Northern Ireland departments, it will not be relevant for them to seek or obtain agreement through those Northern Ireland departments for these purposes.

Management of public money & resourcing

- 3.13. These Regulations and the powers contained within them will operate consistently with the HM Treasury Statement of Funding Policy.¹
- 3.14. Where the Secretary of State is exercising direction and control, the Secretary of State is the relevant authority that governs the Northern Ireland department for that purpose. Similarly, where expenditure is made/income is received in accordance with those directions and decisions, such expenditure and income recorded will represent expenditure and income authorised for that purpose.
- 3.15. The Secretary of State may provide direction to Northern Ireland departments on matters of resourcing where this is required for the purposes of the Regulations. Where a decision or the direction of the Secretary of State brings into question matters of prioritisation relative to other policy issues, the Secretary of State should be advised and engaged on these matters and may provide direction accordingly.

¹ HM Treasury, 'Statement of Funding Policy', February 2023. [\[LINK\]](#)

- 3.16. If and where budgetary and headcount pressures emerge in relation to the implementation or observation of the relevant provisions of the Windsor Framework in a Northern Ireland department, those should be raised with the Northern Ireland Department of Finance in the usual way. The Secretary of State for Northern Ireland will seek to resolve any issues arising, working with Northern Ireland departments and HM Treasury as necessary.
- 3.17. The Secretary of State may issue directions in relation to the Managing Public Money in Northern Ireland (MPMNI)² in place of a Northern Ireland Minister. Where any such direction is confirmed the Secretary of State for Northern Ireland will notify the NI Department of Finance accordingly.

4. Structures, accountability & equality

Structures in Northern Ireland departments

- 4.1. The Secretary of State may request Northern Ireland departments to present and develop work plans in areas subject to direction and control powers, in line with the priorities set out in any request.
- 4.2. Work plans developed for and submitted to the Secretary of State must, in particular, be feasible for a Northern Ireland department to execute. Where decisions of the Secretary of State have implications for resourcing and prioritisation considerations for the Northern Ireland department, these should be communicated to the relevant Northern Ireland Minister.
- 4.3. It will be for Permanent Secretaries of Northern Ireland departments to design structures to support work and enable the delivery of programmes including under the terms of any work plan.

Equality & impact assessments

- 4.4. Northern Ireland departments exercising their functions under the direction and control of the Secretary of State will continue to be subject to their equality and impact assessment duties, for example those set out under Section 75 of the Northern Ireland Act 1998.³ The Secretary of State will need to be advised by Northern Ireland departments accordingly where a new or amended policy engages these duties.
- 4.5. Northern Ireland departments should stand ready to provide supporting policy information and advice to UK Government departments in relation to the satisfaction of their equality and impact assessment duties under the law.

² Department of Finance, 'Managing Public Money in NI', November 2023. [\[LINK\]](#)

³ Northern Ireland Act 1998, Section 75. [\[LINK\]](#)