



HOUSE OF LORDS

European Affairs Committee

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7th Report of Session 2022–23

Report from the Sub-Committee on the  
Protocol on Ireland/Northern Ireland:

# The Windsor Framework

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## *The European Affairs Committee and the Sub-Committee on the Protocol on Ireland/Northern Ireland*

The European Affairs Committee was appointed by the House of Lords to consider matters relating to the United Kingdom's relationship with the European Union and the European Economic Area, including the implementation and governance structures of any agreements between the United Kingdom and the European Union; to consider European Union documents deposited in the House by a minister; and to support the House as appropriate in interparliamentary cooperation with the European Parliament and the Member States of the European Union.

The Sub-Committee on the Protocol on Ireland/Northern Ireland was appointed by the European Affairs Committee to consider all matters related to the Protocol, including scrutiny of: EU legislation within the scope of the Protocol; relevant domestic UK legislation and policy; the Northern Ireland-related work of the governance bodies established under the UK-EU Withdrawal Agreement; the Protocol's political and socio-economic impact on Northern Ireland; and its impact on UK-Irish bilateral relations; as well as conducting interparliamentary dialogue, including with the Northern Ireland Assembly and Irish Oireachtas.

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The Membership of the Sub-Committee on the Protocol on Ireland/Northern Ireland, which conducted this inquiry are:

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### *Sub-Committee staff*

The current staff of the Sub-Committee are Stuart Stoner (Clerk), Tim Mitchell (European Legal Adviser), Liam McNulty (Policy Analyst) and Breda Twomey (Committee Operations Officer).

The Committee is grateful for the ongoing support provided by Dr Ross Coron (Policy Analyst, Committees Scrutiny Unit).

### *Contact details*

Contact details for the Sub-Committee are given on the website. General correspondence should be addressed to the Clerk of the European Affairs Committee, Committee Office, House of Lords, London SW1A 0PW. Telephone 020 7219 5791. Email [hleuroaffairs@parliament.uk](mailto:hleuroaffairs@parliament.uk)

### *Twitter*

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Evidence is published online at <https://committees.parliament.uk/work/7372/windsor-framework/publications/> and available for inspection at the Parliamentary Archives (020 7219 3074).

Q in footnotes refers to a question in oral evidence.

## SUMMARY

We received a substantial volume of oral and written submissions, and on the basis of the evidence we have received, we conclude that the Windsor Framework is an improvement on the Protocol on Ireland/Northern Ireland as originally negotiated. Nevertheless, it is evident that the Windsor Framework does not resolve all the problems with the Protocol.

Business representatives and other stakeholders have welcomed the agreement by the UK and EU of a mutually agreed solution, and the potential this provides for problems that arise in the future to be resolved in a collaborative manner. The benefits of the provisions of the Windsor Framework on movement from Great Britain to Northern Ireland via the green lane of retail goods, agri-food produce including chilled meats, parcels, pets and human medicines have been particularly highlighted. However, for some businesses, the processes under the Windsor Framework will be more burdensome than under the Protocol as it has operated with grace periods and easements. While the green lane will benefit large retailers in particular, some retailers, and some other sectors, may have to use the red lane.

The solutions reached on VAT and excise are pragmatic compromises between the UK and EU positions. On State aid, the compromise reached gives rise to some uncertainty. There has been no substantive change to the role of the CJEU. Furthermore, agreement on the supply of veterinary medicines remains elusive, and is urgently required.

Our witnesses described the technical and legal complexity of the Windsor Framework, and the multiple documents and legal texts that form part of it. They also noted the difference in emphasis between the UK and EU in their descriptions of some of the Windsor Framework's provisions. The Government and the EU have an obligation to explain to stakeholders clearly what the provisions of the Windsor Framework mean in practice. It is incumbent on the UK and EU together to publish a comprehensive summary of the Windsor Framework's provisions, including the consolidated text of the original Protocol as amended by the Windsor Framework.

Before the publication of various guidance documents by the Government on 9 June 2023 (with more to follow), and against the backdrop of tight deadlines for compliance, witnesses expressed concern about the lack of operational detail over aspects of the Windsor Framework, including the green and red lanes, parcels and labelling. We will explore with stakeholders in the autumn the extent to which the published guidance has assuaged these concerns.

The Stormont Brake divides opinion. While some regard it as a genuine and innovative attempt to give Northern Ireland politicians a voice over the application of EU law to Northern Ireland, others argue that the stringent conditions for its use and the limited scope of its application mean it will have a negligible impact. Time will tell how significant it will prove to be in practice.

The proposals for enhanced dialogue between the UK and EU, and engagement with Northern Ireland stakeholders, are welcome in principle. However, the structure for bilateral dialogue between the UK and the EU is more developed than for engagement with Northern Ireland interlocutors, where detail remains lacking. If such engagement is to give Northern Ireland stakeholders

a meaningful voice, the UK and EU need to ensure together that it is properly structured and resourced, and that it has substance.

As the continued suspension of the power-sharing institutions demonstrates, political tensions in Northern Ireland over Brexit and the Protocol remain acute. We acknowledge the importance and the difficulty of resolving these issues to the satisfaction of all communities in Northern Ireland.

The Windsor Framework is the latest attempt to manage the implications of Brexit for Northern Ireland. The UK and the EU must ensure that they remain in close and productive dialogue, both with each other and with Northern Ireland stakeholders, maintaining a commitment to address all the issues that arise out of the Windsor Framework, and those issues which have yet to be resolved, not least for the benefit of all the people of Northern Ireland.





# The Windsor Framework

## CHAPTER 1: THE POLITICAL CONTEXT

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### Political developments since June 2022

1. In July 2021, the Sub-Committee published an introductory report into the operation and impact of the Protocol since it came into force on 1 January 2021.<sup>1</sup> In July 2022, the Sub-Committee published a further, follow-up report.<sup>2</sup> These two reports set out a detailed chronology of political developments in relation to the Protocol up to July 2022. This inquiry has been undertaken against the backdrop of a number of significant political developments over the period since then, which are summarised below.
2. On 13 June 2022, shortly before the publication of the Sub-Committee’s follow-up report, and against the backdrop of significant concerns over the economic, political and constitutional impact of the Protocol on Northern Ireland, the Northern Ireland Protocol Bill was introduced in the House of Commons. In an explainer document published alongside the Bill, the Government stated that it was seeking to achieve four key aims, which had previously been reflected in its July 2021 Command Paper:
  - “Establish new ‘green channel’ arrangements for goods staying in the UK”;
  - “Establish a new ‘dual regulatory’ model to provide flexibility to choose between UK or EU rules”;
  - “Ensure the Government can set UK-wide policies on subsidy control and VAT”;
  - Deal with the Protocol’s “unequal governance” by “removing the role of the CJEU in dispute settlement”.<sup>3</sup>
3. The European Commission immediately expressed its strong opposition to the Bill. On 15 June 2022, it announced that it was taking forward the infringement proceedings against the UK that had been put on hold in September 2021, as well as launching two new infringement proceedings against the UK.<sup>4</sup>

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1 European Affairs Committee, *Report from the Sub-Committee on the Protocol on Ireland/Northern Ireland: Introductory report* (2nd Report, Session 2021–22, HL Paper 55)

2 European Affairs Committee, *Report from the Sub-Committee on the Protocol on Ireland/Northern Ireland: Follow-up report* (2nd Report, Session 2022–23, HL Paper 57)

3 Foreign, Commonwealth and Development Office, *Northern Ireland Protocol: the UK’s solution* (Updated 14 July 2022): <https://www.gov.uk/government/publications/northern-ireland-protocol-the-uks-solution/northern-ireland-protocol-the-uks-solution> [accessed 11 July 2023]

4 The Commission launched the following infringement proceedings against the UK Government: On 1 October 2020 after it tabled the United Kingdom Internal Market Bill in September 2020; on 15 March 2021 for failing to implement the Protocol properly; specifically, regarding the certification requirements for the movement of agri-food; on 15 June 2022 for failing to carry out its obligations under the EU’s sanitary and phytosanitary (SPS) rules; on 15 June 2022 for failing to provide the EU with certain trade statistics data in respect of Northern Ireland, as required under the Protocol; on 22 July 2022 for failing to comply with the requirements of the Union Customs Code regarding the movement of goods from Northern Ireland to Great Britain; on 22 July 2022 for failing to implement EU rules on VAT for e-commerce, namely the Import One-Stop Shop (IOSS); on 22 July 2022 for failing to implement, as required under the Protocol, general EU rules on excise duties; and on 22 July 2022 for failing to implement general EU rules on excise duties.

4. The Northern Ireland Protocol Bill was passed by the House of Commons on 20 July 2022. The Bill received its Second Reading in the House of Lords on 11 October, and Committee Stage took place between 25 October and 7 November 2022. Report Stage was not scheduled. During the period the Bill was before the House, the UK had two changes of Prime Minister: Rt Hon Liz Truss MP succeeded Rt Hon Boris Johnson on 6 September 2022. Ms Truss was then succeeded by Rt Hon Rishi Sunak MP on 25 October 2022.
5. Coinciding with these changes, in the autumn of 2022 intensified discussions on the Protocol began between the new Foreign Secretary, Rt Hon James Cleverly MP, and Commission Vice-President Maroš Šefčovič. On 19 December 2022, Vice-President Šefčovič announced that the Commission was extending the grace period on the provision of veterinary medicines until December 2025.<sup>5</sup> On 12 January 2023, the Government laid before Parliament the Official Controls (Northern Ireland) Regulations 2023, to ensure that official agri-food controls can be carried out at appropriate facilities in Northern Ireland, and to enable the Secretary of State for Environment, Food and Rural Affairs to ensure that enhancements to existing facilities can be executed.
6. Following widespread speculation over previous days that a deal was imminent, on 27 February 2023, the Prime Minister, Rt Hon Rishi Sunak MP, and Commission President Ursula von der Leyen met in Windsor to announce that they had reached “a political agreement in principle on a new way forward—The ‘Windsor Framework’”, which they argued:
 

“constitutes a series of practical and sustainable measures that the Government of the United Kingdom and the European Commission consider necessary to address, in a definitive way, unforeseen circumstances or deficiencies that have emerged since the start of the Protocol. They respond to the everyday issues faced by people and businesses in Northern Ireland, supporting and protecting the Good Friday or Belfast Agreement in all its parts.”<sup>6</sup>
7. The proposed changes were set out in a joint Political Declaration, a draft Decision and a series of joint declarations, unilateral declarations and recommendations in the context of the Withdrawal Agreement Joint Committee and the Joint Consultative Working Group.<sup>7</sup> In parallel, the Government published a new Command Paper, *The Windsor Framework: a new way forward*,<sup>8</sup> while the Prime Minister made an oral statement to the House of Commons.<sup>9</sup> The Commission published various documents, including a detailed ‘Question and Answer’ document, draft Regulations on sanitary and phytosanitary measures, medicinal products for human use

5 European Commission, *Statement by Vice-President Maroš Šefčovič on the movement of veterinary medicines from Great Britain to Northern Ireland, Cyprus, Ireland and Malta* (19 December 2022): [https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_22\\_7831](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_22_7831) [accessed 11 July 2023]

6 HM Government, *Political Declaration by the European Commission and the Government of the United Kingdom*, 27 February 2023, p. 1: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1139420/Political\\_Declaration\\_by\\_the\\_European\\_Commission\\_and\\_the\\_Government\\_of\\_the\\_United\\_Kingdom.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1139420/Political_Declaration_by_the_European_Commission_and_the_Government_of_the_United_Kingdom.pdf) [accessed 11 July 2023]

7 Prime Minister’s Office, 10 Downing Street and The Rt Hon Rishi Sunak MP, Policy paper: *The Windsor Framework* (27 February 2023): <https://www.gov.uk/government/publications/the-windsor-framework> [accessed 11 July 2023]

8 HM Government, *The Windsor Framework: A new way forward*, CP 806, February 2023: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1138989/The\\_Windsor\\_Framework\\_a\\_new\\_way\\_forward.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1138989/The_Windsor_Framework_a_new_way_forward.pdf) [accessed 11 July 2023]

9 HC Deb, 27 February 2023, [cols 570–577](#)

and Tariff Rate Quotas, an Implementing Regulation on high-risk plants originating in the UK, two position papers, and a statement on enhanced engagement with Northern Ireland stakeholders.<sup>10</sup>

8. The UK-EU joint Political Declaration confirmed that the Government would not proceed with the Northern Ireland Protocol Bill<sup>11</sup>, and that there “will no longer be grounds for the existing Commission legal proceedings against the United Kingdom” relating to the Protocol.<sup>12</sup>
9. The draft Decision and a Joint Declaration stated that the UK and EU will, “consistent with the requirements of legal certainty, refer to the Protocol as amended as the ‘Windsor Framework’, and that they may in the same way refer to the Protocol as amended in their domestic legislation.”<sup>13</sup>
10. On 24 March 2023, the Withdrawal Agreement Joint Committee adopted the draft Decision, thus giving legal effect to the Windsor Framework. The Windsor Framework (Democratic Scrutiny) Regulations 2023, giving effect to the Stormont Brake in UK domestic law, were approved by the House of Commons on 22 March and the House of Lords on 29 March 2023. Further Statutory Instruments enacting various aspects of the Windsor Framework

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- 10 European Commission, *Questions and Answers: political agreement in principle on the Windsor Framework, a new way forward for the Protocol on Ireland / Northern Ireland* (27 February 2023): [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_23\\_1271](https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_1271); European Commission, *Proposal for a Regulation of the European Parliament and of the Council – Sanitary and Phytosanitary measures* (27 February 2023): [https://commission.europa.eu/publications/proposal-regulation-european-parliament-and-council-sanitary-and-phytosanitary-measures\\_en](https://commission.europa.eu/publications/proposal-regulation-european-parliament-and-council-sanitary-and-phytosanitary-measures_en); European Commission, *Proposal for a Regulation of the European Parliament and of the Council – Medicinal products for human use* (27 February 2023): [https://commission.europa.eu/publications/proposal-regulation-european-parliament-and-council-medicinal-products-human-use\\_en](https://commission.europa.eu/publications/proposal-regulation-european-parliament-and-council-medicinal-products-human-use_en); European Commission, *Proposal for a Regulation of the European Parliament and of the Council – Tariff Rate Quotas* (27 February 2023): [https://commission.europa.eu/publications/proposal-regulation-european-parliament-and-council-tariff-rate-quotas\\_en](https://commission.europa.eu/publications/proposal-regulation-european-parliament-and-council-tariff-rate-quotas_en); European Commission, *Position paper on agri-food, plants and pet animals* (27 February 2023): [https://commission.europa.eu/publications/position-paper-agri-food-plants-and-pet-animals\\_en](https://commission.europa.eu/publications/position-paper-agri-food-plants-and-pet-animals_en); European Commission, *Position paper on simplifications in the area of customs* (27 February 2023): [https://commission.europa.eu/publications/position-paper-simplifications-area-customs\\_en](https://commission.europa.eu/publications/position-paper-simplifications-area-customs_en); European Commission, *Commission statement on Enhanced engagement with Northern Ireland stakeholders* (27 February 2023): [https://commission.europa.eu/publications/commission-statement-enhanced-engagement-northern-ireland-stakeholders\\_en](https://commission.europa.eu/publications/commission-statement-enhanced-engagement-northern-ireland-stakeholders_en) [accessed 11 July 2023]
  - 11 The basis of the UK’s decision to drop the Northern Ireland Protocol Bill was set out in its Legal Position paper of 27 February 2023. See: HM Government, *UK Government Legal Position: The Windsor Framework* (27 February 2023): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1141823/UK\\_Government\\_Legal\\_Position\\_The\\_Windsor\\_Framework.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1141823/UK_Government_Legal_Position_The_Windsor_Framework.pdf) [accessed 11 July 2023]
  - 12 *Political Declaration by the European Commission and the Government of the United Kingdom*, p. 4: [accessed 11 July 2023]
  - 13 HM Government, *Decision of the Withdrawal Agreement Joint Committee on laying down arrangements relating to the Windsor Framework*, 24 March 2023: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1145694/Decision\\_of\\_the\\_Withdrawal\\_Agreement\\_Joint\\_Committee\\_on\\_laying\\_down\\_arrangements\\_relatiing\\_to\\_the\\_Windsor\\_Framework.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1145694/Decision_of_the_Withdrawal_Agreement_Joint_Committee_on_laying_down_arrangements_relatiing_to_the_Windsor_Framework.pdf) [accessed 11 July 2023]

have since been brought forward.<sup>14</sup> In the meantime, the EU Regulations made swift progress through its legislative process, and were adopted by the Council on 30 May 2023.<sup>15</sup>

11. On 9 June 2023, the Government published further detail on the arrangements giving effect to the Windsor Framework, including policy papers and guidance on the movement of goods and the UK Internal Market Scheme, the Retail Movement Scheme and labelling, supply of medicines, and subsidy control.<sup>16</sup> On the same day, the Commission adopted a revised Notice on the application of EU State aid rules following the withdrawal of the UK from the EU,<sup>17</sup> and a Delegated Act for simplified customs formalities for trusted traders and for sending parcels into Northern Ireland from another part of the United Kingdom.<sup>18</sup>
12. The Enhanced Coordination Mechanism on VAT and excise (one of the new bodies established under the Windsor Framework) met for the first time on 15 June 2023. The Withdrawal Agreement Joint Committee met again on 3 July 2023, when it added the EU Regulations on sanitary and phytosanitary measures and medicinal products for human use to Annex 2 to the Windsor Framework.<sup>19</sup>

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- 14 The House of Lords Secondary Legislation Scrutiny Committee has scrutinised a number of Windsor Framework-related Statutory Instruments in its recent reports. See: Secondary Legislation Scrutiny Committee, *Drawn to the special attention of the house: Draft Windsor Framework (Democratic Scrutiny) Regulations 2023, Branded Health Service Medicines (Costs) (Amendment) Regulations 2023; Includes information paragraphs on: Draft Flags (Northern Ireland) (Amendment) Regulations 2023, Gas Safety (Management) (Amendment) Regulations 2023, Gas Safety (Management) (Amendment) (No.2) Regulations 2023* (34th Report, Session 2022–23, HL Paper 172); Secondary Legislation Scrutiny Committee, *Drawn to the special attention of the House: Draft Medical Devices (Amendment) (Great Britain) Regulations 2023, Draft Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023, Draft REACH (Amendment) Regulations 2023, Russia (Sanctions) (EU Exit) (Amendment) Regulations 2023, Energy Bills Discount Scheme Regulations 2023 and four related instruments, Education (Induction Arrangements for School Teachers) (England) (Amendment) Regulations 2023; Correspondence: Update from the Department for Transport on its maritime backlog* (38th Report, Session 2022–23, HL Paper 189); Secondary Legislation Scrutiny Committee, *Includes information paragraphs on: Draft Building Safety (Leaseholder Protections etc.) (England) (Amendment) Regulations 2023; Draft Tobacco and Related Products (Amendment) (Northern Ireland) Regulations 2023; Russia (Sanctions) (EU Exit) (Amendment) (No. 2) Regulations 2023; Policing Protocol Order 2023; Seed Marketing (Heterogeneous Material) (Temporary Experiment) (England) Regulations 2023* (45th Report, Session 2022–23, HL Paper 223); and Secondary Legislation Scrutiny Committee, *Drawn to the special attention of the House: Draft Postal Packets (Miscellaneous Amendments) Regulations 2023; Russia (Sanctions) (EU Exit) (Amendment) (No. 3) Regulations 2023; Correspondence: Draft Pensions Dashboards (Amendment) Regulations 2023* (46th Report, Session 2022–23, HL Paper 231)
  - 15 Council of the European Union, Press release: *EU-UK relations: EU takes further steps to implement the Windsor Framework* (30 May 2023): <https://www.consilium.europa.eu/en/press/press-releases/2023/05/30/eu-uk-relations-eu-takes-further-steps-to-implement-the-windsor-framework/> [accessed 11 July 2023]
  - 16 Prime Minister's Office, 10 Downing Street, Department for Environment, Food & Rural Affairs, HM Revenue & Customs, Medicines and Healthcare products Regulatory Agency, and Department for Business and Trade, *The Windsor Framework - further detail and publications*, 9 June 2023: <https://www.gov.uk/government/collections/the-windsor-framework-further-detail-and-publications> [accessed 11 July 2023]
  - 17 Communication from the Commission Notice to stakeholders on the withdrawal of the United Kingdom and EU rules in the field of state aid, *OJ C 202/25* (9 June 2023)
  - 18 Commission Delegated Regulation (EU) 2023/1128 of 24 March 2023 amending Delegated Regulation (EU) 2015/2446 to provide for simplified customs formalities for trusted traders and for sending parcels into Northern Ireland from another part of the United Kingdom *OJ L 149/26* (9 June 2023)
  - 19 Foreign, Commonwealth and Development Office, Press release: *Joint statement on the Withdrawal Agreement Joint Committee meeting* (3 July 2023): <https://www.gov.uk/government/news/joint-statement-on-the-withdrawal-agreement-joint-committee-meeting-3-july-2023> [accessed 11 July 2023]

13. The UK and the EU have also announced various further staging posts in the implementation and operation of the Windsor Framework over the coming months.

**Table 1: Forthcoming dates for implementation and operation of aspects of the Windsor Framework**

<b>Date</b>	<b>Measure</b>
September 2023	The new trusted trader scheme, through which businesses can access the green lane to move goods from Great Britain to Northern Ireland, is set to be in place.
October 2023	Enhanced sanitary and phytosanitary (SPS) inspection facilities to be in place in Northern Ireland.
From 1 October 2023	The green lane and red lane will commence operation. From this date, prepacked meat and fresh dairy (from Great Britain for sale in Northern Ireland) should be individually labelled as ‘not for EU’. The UK Government has stated it will provide “transitional reimbursement funding” during this first phase. Identity checks will be reduced to 10% for consignments of retail goods which have a confirmed consumer in Northern Ireland, have ‘not for EU’ labels and are thus able to use the green lane. Any goods not meeting these conditions are obliged to use the red lane.
January 2024	Expansion of the support provided to businesses through the existing UK Customs Duty Waiver Scheme.
By 31 July 2024	The UK should give the European Commission a progress report on the completion of SPS inspection facilities in Northern Ireland (and then every three months until the requirements are met).
30 September 2024	The full ‘green lane’ will take effect for the movement of goods between Great Britain and Northern Ireland, based on an expansion of the new trusted trader scheme.
30 September 2024	The new set of arrangements for the movement of parcels under the Windsor Framework will apply.
From 1 October 2024	Labelling requirements will be extended to all dairy products, such as UHT milk and butter. The Government propose the application of this across the UK from this point, in consultation with the Scottish and Welsh Governments. The frequency rate of identity checks on retail goods consignments will be further reduced to 8%.
31 December 2024	By this date, the first vote will take place in the Northern Ireland Assembly on the continued application of Articles 5–10 of the Windsor Framework, as outlined in the democratic consent mechanism.
1 January 2025	New arrangements for the supply of medicines to Northern Ireland will take effect.
1 July 2025	Final SPS inspection facilities should be in place in Northern Ireland.

Date	Measure
From 1 July 2025	All retail goods (other than goods sold loose) should be individually labelled, with some exceptions for those not subjected to EU official controls (e.g. confectionery, chocolate, pasta, biscuits, coffee). The rate of identity checks on retail goods consignments will be reduced to 5%.
31 December 2025	The grace period for veterinary medicines will end. In the absence of any alternative agreed solution, the UK must ensure that supplies of veterinary medicines to Northern Ireland conform with relevant EU law and the provisions of the Windsor Framework.
By 1 January 2027	The Withdrawal Agreement Joint Committee Review of Enhanced Coordination Mechanism on VAT and excise to be conducted jointly by the UK and EU.

Sources: Northern Ireland Assembly, *Brexit and Beyond: Timeline and Key Documents*: <http://www.niassembly.gov.uk/assembly-business/brexit-and-beyond/timeline-and-key-documents/> [accessed 11 July 2023] and *The Windsor Framework - further detail and publications*.

14. The power-sharing institutions in Northern Ireland have remained suspended throughout this period. On 6 December 2022, the Northern Ireland (Executive Formation etc) Act 2022 received Royal Assent, delaying the statutory requirement for another Assembly election. There was speculation that the timing of the Windsor Framework agreement was designed to pave the way for the restoration of the power-sharing institutions in Northern Ireland ahead of the 25th anniversary of the signing of the Belfast/Good Friday Agreement in April 2023.<sup>20</sup> However, the power-sharing institutions remain suspended at the time of writing.

### The work of the Sub-Committee

15. In the months after the publication of its July 2022 follow-up report, and against the backdrop of these developments, the Sub-Committee undertook the following work:
- An inquiry into the Northern Ireland Protocol Bill launched in August 2022, including a visit to Newry and Belfast. The Sub-Committee wrote a detailed letter to the Foreign Secretary in November 2022 setting out its findings.<sup>21</sup>
  - A follow-up assessment concerning the provision of medicines to Northern Ireland under the Protocol in January and February 2023. The Sub-Committee wrote to the Foreign Secretary on 24 February (shortly before the announcement of the Windsor Framework) calling for an urgent resolution of these issues.<sup>22</sup>

20 BBC, 'Good Friday Agreement: Sunak calls for Stormont return ahead of Biden visit' (10 April 2023): <https://www.bbc.co.uk/news/uk-northern-ireland-65228411> [accessed 11 July 2023]

21 Letter from Lord Jay of Ewelme to Rt Hon James Cleverly MP re: Findings of the House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland's inquiry into the Northern Ireland Protocol Bill, 22 November 2022: <https://committees.parliament.uk/publications/31662/documents/177968/default/>

22 Letter from Lord Jay of Ewelme to Rt Hon James Cleverly MP re: Follow-up scrutiny of the provision of medicines to Northern Ireland under the Protocol, 24 February 2023: <https://committees.parliament.uk/publications/34082/documents/187510/default/>

- Scrutiny of EU legislative proposals applying to Northern Ireland under the Protocol. During the 2022–23 session so far, the Sub-Committee has written over 100 letters to Government Ministers and received over 60 replies on nearly 50 EU legislative proposals.<sup>23</sup>
- Scrutiny of domestic UK legislation with implications for Northern Ireland in relation to the Protocol, including the Nationality and Borders Act;<sup>24</sup> the Northern Ireland Troubles (Legacy and Reconciliation) Bill;<sup>25</sup> the Retained EU Law (Revocation and Reform) Bill;<sup>26</sup> and the Illegal Migration Bill.<sup>27</sup>
- Publication in May 2023 of a report on the PEACE PLUS Programme 2021–2027 Financing Agreement between the UK and EU, under the Constitutional Reform and Governance Act scrutiny process.<sup>28</sup>

### This inquiry

16. The Sub-Committee launched an inquiry into the Windsor Framework through the publication of a Call for Evidence on 17 March 2023. Between March and May 2023, the Sub-Committee held seven evidence sessions with business representatives, academic, legal and trade experts, senior members of the House of Lords, and, on 16 May, the Secretary of State for Foreign, Commonwealth and Development Affairs, Rt Hon James Cleverly MP. The Sub-Committee received 43 written submissions from the Government, the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland, the Alliance Party of Northern Ireland, the Traditional Unionist Voice Party (TUVV), business representatives, trade bodies, community organisations, academics, thinktanks, legal experts and economists. The Sub-Committee held private meetings with senior

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23 House of Lords, European Affairs Sub-Committee on the Protocol on Ireland/Northern Ireland, *Correspondence with Ministers 10 May 2022–13 June 2023*: <https://www.parliament.uk/globalassets/documents/lords-committees/protocol-on-ireland-northern-ireland/nipc-cwm-2022-2023-13.06.23.pdf>

24 Letter from Lord Jay of Ewelme to Rt Hon Robert Jenrick MP re: Nationality and Borders Act, 19 January 2023: <https://committees.parliament.uk/publications/33614/documents/183152/default/>; Letter from Lord Jay of Ewelme to Rt Hon Robert Jenrick MP, 24 March 2023: <https://committees.parliament.uk/publications/34565/documents/190244/default/>; Letter from Rt Hon Robert Jenrick MP to Lord Jay of Ewelme, 17 March 2023: <https://committees.parliament.uk/publications/34647/documents/190730/default/>; Letter from Rt Hon Robert Jenrick MP to Lord Jay of Ewelme, 5 May 2023: <https://committees.parliament.uk/publications/39983/documents/195073/default/>; Letter from Lord Jay of Ewelme to Rt Hon Robert Jenrick MP, 8 June 2023: <https://committees.parliament.uk/publications/40284/documents/196619/default/>

25 Letter from Lord Jay of Ewelme to Lord Caine re: Northern Ireland Troubles (Legacy and Reconciliation) Bill, 1 December 2022: <https://committees.parliament.uk/publications/31836/documents/178954/default/>; Letter from Lord Caine to Lord Jay of Ewelme, 20 December 2022: <https://committees.parliament.uk/publications/33613/documents/183150/default/>

26 Letter from Lord Jay of Ewelme to Rt Hon Kemi Badenoch MP re: Retained EU Law (Revocation and Reform) Bill, 9 February 2023: <https://committees.parliament.uk/publications/33943/documents/186051/default/>; Letter from Lord Jay of Ewelme to Rt Hon Kemi Badenoch MP, 11 May 2023: <https://committees.parliament.uk/publications/39900/documents/194471/default/>; Letter from Rt Hon Kemi Badenoch MP to Lord Jay of Ewelme, 16 June 2023: <https://committees.parliament.uk/publications/40497/documents/197596/default/>; Letter from Lord Jay of Ewelme to Rt Hon Kemi Badenoch MP, Secretary of State for Business and Trade re: Retained EU Law (Revocation and Reform) Bill, 12 July 2023: <https://committees.parliament.uk/publications/40849/documents/199018/default/>

27 Letter from Lord Jay of Ewelme to Lord Sharp of Epsom re: Illegal Migration Bill, 11 May 2023: <https://committees.parliament.uk/publications/39901/documents/194473/default/>

28 European Affairs Committee, *Report from the Sub-Committee on the Protocol on Ireland/Northern Ireland Scrutiny of International Agreements: PEACE PLUS Programme 2021–2027 Financing Agreement* (6th Report, Session 2022–23, HL Paper 196)

representatives of the five largest parties in the Northern Ireland Assembly. We also held a seminar on the democratic deficit and the Stormont Brake on 1 March 2023 (shortly after the Windsor Framework was announced).<sup>29</sup>

17. On 24 and 25 May 2023, the Committee visited Brussels, where it held private meetings with Commission Vice-President Maroš Šefčovič, the UK Ambassador to the EU, HE Lindsay Croisdale-Appleby, senior diplomats and MEPs, and representatives of the Northern Ireland Executive Office in Brussels. The Committee also held a roundtable seminar with Brussels-based business representatives.<sup>30</sup> We are grateful to all of our interlocutors for their help.
18. After the conclusion of the Sub-Committee's evidence-gathering process, the Government published on 9 June 2023 further detail on the arrangements giving effect to the Windsor Framework.<sup>31</sup> The evidence cited in this report predates this guidance. We intend to seek the views of stakeholders on the material published by the Government, and further guidance to follow, in the autumn.
19. In line with the Sub-Committee's remit, this report focuses on the implications of the Windsor Framework for Northern Ireland. Several witnesses also highlighted the implications of the Windsor Framework for the wider UK-EU relationship. This was explored in the European Affairs Committee report on *The Future UK-EU relationship*, published on 29 April 2023.<sup>32</sup>
20. In view of the further work to be done in scrutinising the impact and operation of the Windsor Framework over the coming months, the Liaison Committee agreed on 13 June 2023 to extend the appointment of the Sub-Committee until the end of the current Parliament. It is also intended that the Sub-Committee will be renamed as the Sub-Committee on the Windsor Framework at the start of the 2023–24 parliamentary session.
21. The cross-party membership of the Sub-Committee, drawn from Northern Ireland and the rest of the UK, has a wide range of expertise in Northern Ireland affairs. Our membership represents a range of views, both on Northern Ireland's constitutional position and on the Windsor Framework itself. While some of us support the Windsor Framework, others of us either oppose it or retain significant concerns over it. In view of this, and without prejudice to the views of individual members, we see our task as not to argue for or against the Windsor Framework itself, but rather to scrutinise its provisions in an objective and evidence-based manner. Our report and the conclusions that we reach should be viewed in that context.
22. In that spirit, **we make this report for debate.**

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29 See Appendix 4, Note of discussion on Virtual Seminar on the Democratic Deficit in relation to the Protocol on Ireland/Northern Ireland, 1 March 2023.

30 See Appendix 5, Note on Roundtable Seminar with Brussels based Business Stakeholders, 25 May 2023, Brussels.

31 *The Windsor Framework - further detail and publications* [accessed 11 July 2023]

32 European Affairs Committee, *The future UK-EU relationship* (4th Report, Session 2022–23, HL Paper 184)



## CHAPTER 2: THE OVERALL IMPACT OF THE WINDSOR FRAMEWORK

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### The UK and EU positions

23. We set out below the UK and EU’s overall assessments of the Windsor Framework, as described in the Government’s Command Paper and the Foreign Secretary’s evidence to the Committee, and the Commission’s ‘Questions and Answers’ document on the Windsor Framework.

#### Box 1: The UK and EU positions

##### The Government’s position

In its Command Paper, the Government argued that “this new approach, set out in the Windsor Framework, restores the balance needed to uphold the Belfast (Good Friday) Agreement in all its dimensions. It puts in place a new legal and constitutional framework, changing the text of the treaty and scrapping a range of EU rules. The agreement: restores the smooth flow of trade within the UK internal market ... safeguards Northern Ireland’s place in the Union... [and] addresses the democratic deficit. ... At the same time it fully preserves access for Northern Ireland businesses to the EU market, alongside their full unfettered access to the whole UK market, ensuring a unique set of opportunities for businesses and citizens in Northern Ireland. The agreement therefore provides a new basis for future stability and prosperity in Northern Ireland, as we look ahead to the 25th anniversary of the Belfast (Good Friday) Agreement.”

The Foreign Secretary stated that, in the Government’s dialogue with the EU, it had used the findings of this Committee and others “in highlighting the fact that actual problems were created by the Protocol.” These discussions helped move the Commission from a position where it argued “the Protocol was fine and needed to be implemented in full” to a shared recognition that “something needed to change; the status quo was not working—and certainly what would not work was full implementation of the Protocol.” This provided the impetus for intensive months of negotiation.<sup>33</sup>

The Foreign Secretary argued that the EU, as well as the UK, made some “really bold choices” against the backdrop of political risk, and “the idea that somehow there was a significantly—or, even subtly—better deal just over the horizon, I think, is wrong. ... If we reopen negotiations, there is certainly no guarantee that we would get more movement from the EU.”<sup>34</sup>

##### The Commission’s position

The Commission stated that it “has from the beginning shown genuine understanding for unforeseen practical challenges in the operation of the Protocol, affecting the everyday lives of people and businesses in Northern Ireland. Over the past months, the European Commission and the UK Government have therefore worked intensively together to find joint solutions in response to these challenges. Only joint solutions can ensure lasting certainty and predictability for all communities in Northern Ireland. ...

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33 [Q 72](#)

34 [Q 74](#)

“A political agreement in principle between the European Commission and the UK Government has been reached on the Windsor Framework. This constitutes a comprehensive set of joint solutions to address, in a definitive manner, the real-life concerns of all communities in Northern Ireland, while protecting the integrity of the EU Single Market. The solutions have been found within the framework of the Withdrawal Agreement, of which the Protocol is an integral part. ...

“These practical and sustainable solutions mark a new way forward on the Protocol and ensure legal clarity and predictability for people and businesses in Northern Ireland. The solutions strike the right balance between flexibilities and effective safeguards for the protection of the EU Single Market.”<sup>35</sup>

### Evidence received

#### *Business representatives*

24. The Northern Ireland Business Brexit Working Group stated that, in a recent survey, three out of five respondents identified a deal between the EU and UK as a key driver for growth in Northern Ireland.<sup>36</sup> Stuart Anderson, Head of Public Affairs, Northern Ireland Chamber of Commerce and Industry, and Convenor of the Northern Ireland Business Brexit Working Group, said that a deal comprising joint solutions between the UK and EU was the “number one ask” for business. He also welcomed many of the easements agreed in the Windsor Framework, as business had always made clear that full implementation of the Protocol was not workable. However, as full implementation had not taken place, the benefits of these easements may not be visible to the Northern Ireland consumer. Furthermore, “one failing in this process has been that the Windsor Framework was announced, but businesses were not clear about the timelines for when it was going to be introduced. Then there was a degree of panic and a degree of looking for operational detail.” He stressed that “communications need to be in plain English so that we have real clarity and not ‘legalese’.”<sup>37</sup>
25. ADS Group, the trade association for the aerospace industry, welcomed the Windsor Framework as a step forward, since “overwhelming feedback from our members is that scrapping the Northern Ireland Protocol would have been the worst possible outcome for all.”<sup>38</sup>
26. David Brown, President, Ulster Farmers’ Union, said that, under the Protocol, problems were not identified until a business spotted something was not working. The new processes therefore needed to be tried and tested.<sup>39</sup> He added that the grace periods had allowed the agriculture sector “to continue almost without ... extreme difficulties”, and it now faced uncertainty as to whether their removal would create complexities.<sup>40</sup>
27. Sarah Hards, Sales Director, AM Logistics, welcomed the Windsor Framework, but noted that it “has been very skewed towards retail, and the other industries have been slightly forgotten about when it comes to moving

35 *Questions and Answers: political agreement in principle on the Windsor Framework, a new way forward for the Protocol on Ireland / Northern Ireland* [accessed 11 July 2023]

36 Written evidence from Northern Ireland Business Brexit Working Group ([IWF0041](#))

37 [QQ 25, 27, 29](#)

38 Written evidence from ADS Group ([IWF0014](#))

39 [Q 25](#)

40 [QQ 28, 29](#)

their goods.”<sup>41</sup> Mark Tait, Director, Target Transport, and representing the Road Haulage Association, agreed that, while the Windsor Framework may benefit the retail sector, for the road haulage sector “it could make things much more difficult than our current position, even under the easements that we are working with.”<sup>42</sup>

*Northern Ireland experts and key stakeholders*

28. Co-operation Ireland described the Windsor Framework as “a significant advance” on the original Protocol, and welcomed the flexibility and willingness to adopt novel solutions shown by both sides. They argued that restoration of trust between the UK and the EU and a return to bilateralism had been key factors in providing for a reset in EU-UK relations, and that both sides now need to continue to demonstrate good faith and pragmatism.<sup>43</sup> The Centre for Cross Border Studies said that the Windsor Framework marked a significant and positive change in UK-EU relations, and a welcome abandonment of unilateral policies, which the UK and the EU now needed to build on.<sup>44</sup>
29. The Alliance Party of Northern Ireland described the Windsor Framework as an “evolution” from the Protocol, “providing solutions to many of the technical and operational problems experienced in the early months of the operation of the Protocol”.<sup>45</sup>
30. Dr Anna Jerzewska, Director, Trade and Borders, said that the Windsor Framework was “incredibly important” in terms of providing stability and predictability for business, although there are still customs formalities even for goods that remain in Northern Ireland. She noted that the Framework is a series of complex legal texts, and stressed the need for clearer communication of how it will all work.<sup>46</sup>
31. Dr Esmond Birnie, Senior Economist, Ulster University, described some of the easements, where the EU had pulled back “from its sometimes absurd rigour in its defence of the Single Market”, as “victories for common sense”. He also noted that UK-EU diplomacy had shifted from mutual aggression to mutual generosity. However, he said that significant questions remained over the movement of goods from Great Britain to Northern Ireland.<sup>47</sup>
32. Lord Bew agreed that the Windsor Framework was “on the upside of legitimate expectation”, noting that the proposals on VAT, tax, medicines and the Stormont Brake were not anticipated in advance.<sup>48</sup>
33. On the other hand, James Webber, Partner, Shearman and Sterling, said that “what we had before was very poor indeed. ... The solution that the Windsor Framework represents is indeed a solution versus the Protocol but may actually feel like a more intense level of Irish Sea border versus the grace periods that we have in place today.”<sup>49</sup> Martin Howe KC, 8 New Square,

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41 [QQ 35, 38, 39](#)

42 [Q 25](#)

43 Written evidence from Co-operation Ireland ([IWF0015](#))

44 Written evidence from Centre for Cross Border Studies ([IWF0004](#))

45 Written evidence from Alliance Party of Northern Ireland ([IWF0019](#))

46 [Q 47](#)

47 Written evidence from Dr Esmond Birnie ([IWF0037](#))

48 [Q 11](#)

49 [Q 1](#)

said that “there remains a border—quite a strict border—between Great Britain and Northern Ireland: a border inside the United Kingdom.”<sup>50</sup>

34. The TUV argued that “our Union is being dismantled and disrespected by the Protocol, as repackaged by the Windsor Framework ... to come to terms with the Protocol/Windsor Framework is to accept that never again will Northern Ireland be a full part of the United Kingdom. This we cannot and will not do.”<sup>51</sup>

*Comparing the UK and EU descriptions of the Windsor Framework*

35. We invited our witnesses to compare the UK and EU descriptions of the Windsor Framework, as set out in the UK Command Paper and Commission ‘Questions and Answers’ document. The Foreign Secretary said that, on the substantive elements of the agreement, the UK and EU were:

“absolutely as one. When you are explaining quite a broad and detailed range of procedures and circumstances, it is inevitable that different audiences will want to focus on and be concerned about different elements. The underpinning message remains consistent between the two counterparties”.<sup>52</sup>

36. Dr Lisa Claire Whitten, Research Fellow, Post Brexit Governance NI, Queen’s University Belfast, said that any discrepancies between the UK and EU framing of the Windsor Framework were “impactful on the level of politics and communications rather than indicating ... future disagreement on the Framework’s legal substance.”<sup>53</sup> Lord Bew said that “the only thing that matters is the joint agreement: there is a text, and it is very clear in my mind what it means.”<sup>54</sup>
37. On the other hand, the Alliance Party of Northern Ireland described the Windsor Framework as “a heavily spun perspective from the Government.”<sup>55</sup> Martin Howe KC argued that “in general the Commission’s public statements are accurate, but a number of the statements made by the UK Government in the Command Paper are, at minimum, highly misleading and questionable, and some I cannot reconcile with reality.”<sup>56</sup>
38. Mark Tait said that “we had two publications after the Windsor Framework was announced. One was from the UK Government, which you read and thought, ‘Well, this looks wonderful’. Then, you read the EU’s publication and thought, ‘Hmm, maybe not quite so wonderful’.”<sup>57</sup>

**Conclusions**

39. **In their overall assessment of the Windsor Framework, business, Northern Ireland experts and stakeholders have stressed:**
- **The Windsor Framework is an improvement on the Protocol as originally agreed, in particular for large retailers who are able**

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50 [Q 47](#)

51 Written evidence from TUV ([IWF0038](#))

52 [Q 72](#)

53 [Q 47](#)

54 [Q 11](#)

55 Written evidence from Alliance Party of Northern Ireland ([IWF0019](#))

56 [Q 47](#)

57 [Q 25](#)

to use the green lane, although some checks on the movement of goods between Great Britain and Northern Ireland remain.

- An agreement negotiated between the UK and the EU is welcome, and paves the way for improved UK-EU relations.
- Nevertheless, in important respects, and in particular for the non-retail sector, the Windsor Framework will be more burdensome than the Protocol as it has operated to date with various grace periods and derogations.
- There was significant concern over the lack of clarity about the Windsor Framework's operation in the weeks after its publication, against the backdrop of tight deadlines for implementation.
- The Windsor Framework remains politically divisive in terms of its impact on Northern Ireland's relationship with the rest of the UK, Ireland, and the EU.

We address each of these issues in the remainder of this report.

40. Our witnesses have also described the technical and legal complexity of the Windsor Framework, and the multiple documents and legal texts that form part of it. They have also noted the confusion that may arise from the difference in emphasis between the UK and EU in their descriptions of some of the Windsor Framework's provisions. *It is incumbent on the UK and EU together to publish a comprehensive summary of the Windsor Framework's provisions, including the consolidated text of the original Protocol as amended by the Windsor Framework.*

## CHAPTER 3: THE MOVEMENT OF GOODS

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### The green and red lanes; and movement of agri-food products

#### *The UK and EU positions*

41. We set out below the UK and EU’s descriptions of the Windsor Framework’s provisions on the green and red lane and movement of agri-food products, as described in the Foreign Secretary’s evidence to the Committee, and the Commission’s ‘Questions and Answers’ document on the Windsor Framework. It should be noted that, while the Government refers extensively to a ‘green lane’, neither the Government nor the Commission refer explicitly to a ‘red lane’. However, their references (in the Government’s case) to “normal third country processes and requirements” and (in the Commission’s case) to “full customs checks and controls” amount in practice to what is commonly understood as the ‘red lane’ process.

#### **Box 2: The UK and EU positions**

##### **The Government’s position**

“The new ‘green lane’ will mean that those goods moving within it (as part of our new UK Internal Market Scheme), and being sold or used in the UK, will be freed of unnecessary paperwork, checks and duties, using only ordinary commercial information rather than international customs processes or complex certification requirements for agrifood. In contrast, trade moving into the EU from Great Britain will be subject to normal third country processes and requirements. These radically simplified new [green lane] arrangements will be underpinned by new data-sharing arrangements, using commercial data and technology to monitor trade flows, rather than relying on international customs procedures that were inappropriate for UK internal market movements.

“As well as addressing the barriers and burdens for internal UK trade, we have also expanded the range of businesses who will be able to benefit from those arrangements. This will mean businesses throughout the UK will now be eligible—moving away from the previous restrictions that required physical premises in Northern Ireland. In addition, the Framework quadruples to £2 million the turnover threshold below which companies involved in commercial processing can move eligible goods via the enhanced scheme. It also makes changes to existing sectoral exemptions for processing goods which will enable a wider range of businesses authorised under the UK Internal Market Scheme to access the new ‘green lane’. And where traders cannot be certain of the end destination of their goods when first moving into Northern Ireland, in the coming months we will also establish a new tariff reimbursement scheme for those who can show the goods were ultimately not destined for the EU. ...

“We consider that the new green lane provides a sustainable, long-term legal framework for agrifood retail trade into Northern Ireland. All traders moving agrifood goods for the final consumer in Northern Ireland can become members of the UK-run internal market scheme—including retailers, wholesalers, caterers and those providing food to public institutions like schools and hospitals.

“The new scheme also means that the threat of up to 500 certificates for a single truck has been removed and replaced with a single document confirming that goods are staying in Northern Ireland and are moved in line with the terms of our internal market scheme. That document will be electronically and remotely processed, without the need for physical checks. Bans on British products such as sausages entering Northern Ireland will also be scrapped permanently. And there will be no arbitrary or routine physical checks, with interventions based only on risk and intelligence decisions made by UK authorities.”<sup>58</sup>

### **The Commission’s position**

“The EU and UK have agreed on new and simplified rules and procedures for the entry into Northern Ireland from Great Britain of certain agri-food retail goods where the goods are sent for final consumption in Northern Ireland:

- Use of a general single certificate for mixed loads of agri-food goods;
- Identity checks drastically reduced: down to 5% when all safeguards are in place. Physical checks to be carried out on a risk basis and intelligence-led approach;
- Application of UK public health standards (e.g. level of additives in food) to goods moved for end consumption in Northern Ireland. Previously prohibited chilled meats, such as sausages, are now allowed;
- Removal of certificates for organics and wine;
- Possibility to move goods originating in the rest of the world to Northern Ireland through Great Britain when UK conditions are identical to EU ones (specific list of products, including New Zealand lamb and vegetables). ...

“Several safeguards have been agreed to protect the integrity of the EU Single Market:

- The UK is constructing operational SPS Inspection facilities and provide EU representatives with access to relevant UK IT databases.
  - Labelling ‘not for EU’ will ensure that products remain in Northern Ireland and do not undermine public health and consumer protection in the EU Single Market.
  - Identity checks will be progressively reduced as the labelling requirements are fully completed.
  - Monitoring of the movement of retail goods, traceability and listing of the dispatching and receiving authorised establishments.
  - Possibility to suspend partly or fully the facilitations to address specific problems or systematic failures of compliance with the new arrangements.
- ...

58 Written evidence from HM Government - Rt Hon James Cleverly MP, Secretary of State for Foreign, Commonwealth and Development Affairs ([IWF0042](#))

“Based on an expanded trusted trader scheme, the Commission and UK Government have agreed to dramatically simplify procedures related to the movement of goods. Goods moved by trusted traders from Great Britain to Northern Ireland that are not at risk of entering the EU Single Market can benefit from these new arrangements. However, goods moving from Great Britain to Northern Ireland that are destined for the EU or at risk of entering the EU will be subject to full customs checks and controls. ...

“The new trusted trader scheme will also be open to companies based in Great Britain and not only in Northern Ireland, as is currently the case. For goods subject to processing, two conditions are in place to consider processing to be non-commercial: either the processor has a low turnover (i.e. below an agreed threshold), or it belongs to specific sectors (sale of retail food to consumers, construction, health care, not-for-profit and use of animal feed). Apart from consumer goods, only goods that are processed non-commercially on this basis can be moved by trusted traders.”<sup>59</sup>

*Evidence received from academic and trade experts, and Northern Ireland stakeholders*

42. Anton Spisak, Head of Political Leadership, Tony Blair Institute for Global Change, argued that there had been a move away from the default under the Protocol whereby GB businesses moving any goods into Northern Ireland would face exactly the same regulatory and customs burden regardless of end destination. He said that for goods destined for Northern Ireland, “the burden on businesses will be heavily reduced but not completely eliminated”. He also noted the importance of expanding the scope of the trusted trader scheme to include businesses without physical premises in Northern Ireland. He argued that “the EU has been able to take a more proportionate and risk-based approach to any kind of controls and requirements that are necessary for the movement of goods”.<sup>60</sup>
43. Dr Andrew McCormick, former Director General of International Relations for the Northern Ireland Office, told us that he had originally proposed the green lane/red lane model in March 2018, but that the final outcome was a pragmatic improvement. For instance, the inclusion of agri-food goods resolved “an immense problem”. He was optimistic that as trust increased, it would be possible to apply a pragmatic approach to operation of the green lane. While the model “has been oversold in too simple a way ... it stands as better than anything else I have ever seen in this context.”<sup>61</sup>
44. Jess Sargeant, Associate Director, Institute for Government (IfG) likewise expressed surprise at the extent to which the EU had moved on the agri-food retail trade scheme, which she described as “a really positive development that will maintain supermarket supply chains”. She noted that the UK described the derogations by which goods produced in Great Britain and sold in retail in Northern Ireland only comply with some parts of EU law as “a dual regulatory regime, and the EU has been very clear that it is not a dual regulatory regime. Having said that, when you look at the substance of what they say, it is pretty much the same.”<sup>62</sup>

59 [\*Questions and Answers: political agreement in principle on the Windsor Framework, a new way forward for the Protocol on Ireland / Northern Ireland\*](#) [accessed 11 July 2023]

60 [Q 5](#)

61 *Ibid.*

62 [QQ 1, 5](#)



45. Dr Anna Jerzewska said that the Windsor Framework marked a shift to a system based on trust, thus providing business with more flexibility.<sup>63</sup> She highlighted in particular the single certificate for mixed loads of agri-food goods, the reduction of checks allowing the movement of chilled meats, and the removal of certificates for organic products and wine. However, she stressed the need for additional guidance.<sup>64</sup>
46. On the other hand, Dr Esmond Birnie said that the Prime Minister’s claim that the green lane will “remove any sense of a border in the Irish Sea within the UK” was “open to interpretation because any firm wishing to use the green lane will have to be accepted as a ‘Trusted Trader.’” He noted that a customs form will still be necessary to move goods from Great Britain to Northern Ireland, and estimated that about £3 billion of goods coming in from Great Britain will be excluded from the green lane.<sup>65</sup>
47. James Webber said that the green lane mechanism is an improvement, in particular for small and medium-sized enterprises (SMEs). However, “essentially, the green lane represents a further definition of things that are not ‘at risk’ of further importation into the EU, but the ‘at risk’ concept is still something that the EU controls.” He argued that this was “fundamentally excessive”.<sup>66</sup>
48. Martin Howe KC argued that, because of the formalities involved, it was more accurate to refer to a simplified procedure than a green lane. He noted that the scheme specifically excluded from its scope goods that originated in Northern Ireland. This meant that Northern Ireland businesses cannot gain the exemptions from the application of EU rules that British businesses gain when exporting into Northern Ireland under the scheme, potentially placing them at a competitive disadvantage.<sup>67</sup>
49. Dr Lisa Claire Whitten agreed that “the easements on that green lane system could lead to the undercutting of Northern Ireland producers that are still required to uphold the full remit of those EU standards”.<sup>68</sup>

*Evidence received from business representatives*

*The retail sector*

50. The Northern Ireland Business Brexit Working Group highlighted the benefits for retailers, including confirmation that full customs and vet attested export health certificates have been avoided; physical border checks will be minimised; and various forms of separate certification such as for organics will not be needed. They welcomed lifting of the commercial processing annual turnover threshold, and the introduction of an agreed tariff rebate scheme. However, they called for clarity in relation to the movement of goods from the rest of the world, customs data requirements, the operation of the green and red lanes, especially for fast paced groupage and pallet networks, the apportionment of mixed loads of goods at risk and not at risk, and the operation of the tariff rebate scheme. They also noted business concern at

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63 [Q 50](#)

64 [Q 52](#)

65 Written evidence from Dr Esmond Birnie ([IWF0037](#))

66 [Q 5](#)

67 [Q 51](#)

68 [Q 52](#) and written evidence from Dr Viviane Gravey, Dr Billy Melo Araujo and Dr Lisa Claire Whitten ([IWF0022](#))

adapting to significant changes both in the Windsor Framework and the Border Target Operating Model from October 2023.<sup>69</sup>

51. Sarah Hards said that for retailers, the Windsor Framework was a major improvement that could see supply chains returning to normal.<sup>70</sup> Those using the green lane would see “a major reduction in the amount of paperwork that is required”, including a shortened commodity code and the elimination of supplementary declarations after the goods have been moved, which had been “really burdensome and onerous on any type of business bringing goods in from GB.”<sup>71</sup>
52. Andrew Opie, Director of Food and Sustainability, British Retail Consortium, said that every food business will want to use the green lane, whether an SME or a large supermarket. He welcomed the extension of the trusted trader scheme to many more SMEs. He called for clarity on labelling, data requirements and on requirements for sealing of lorries.<sup>72</sup>

*The agri-food sector*

53. The British Poultry Council noted that the green lane mainly lends benefits to retailers moving pre-packaged food. On the other hand, meat intended for processing and live poultry would go through the red lane and need to comply with EU regulations.<sup>73</sup>
54. Lakeland Dairies Co-operative Society Limited said that the red lane would protect the Northern Ireland dairy sector by only allowing products approved by the EU to enter the Northern Ireland market. They were working on the basis that everything they bring into Northern Ireland would be via the red lane.<sup>74</sup> The Ulster Farmers’ Union also noted that agri-intermediate goods or inputs such as grain for animal consumption would use the red lane. They sought clarity on the checks and processes involved.<sup>75</sup>
55. The National Farmers’ Union noted that issues regarding livestock movements from Northern Ireland to Great Britain and back had not been resolved under the Windsor Framework. In practice, animals from England and Wales “cannot be brought back to NI until a period of six months has elapsed, making it financially unviable.”<sup>76</sup>
56. The Ulster Farmers’ Union also expressed disappointment that this issue continues to be a significant problem, in particular for pedigree breeders. They noted that “a handful of sales have taken place with no great success” due partly to “fear within livestock marts of who is responsible if something goes wrong.” They, the National Farmers’ Union and the British Veterinary Association also called for urgent clarity around the retagging of livestock moving from Great Britain to Northern Ireland.<sup>77</sup>

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69 Written evidence from Northern Ireland Business Brexit Working Group ([IWF0041](#))

70 Written evidence from AM Logistics ([IWF0006](#)) and [Q 35](#)

71 Written evidence from AM Logistics ([IWF0006](#)) and [QQ 35, 39](#)

72 [QQ 61, 64](#)

73 Written evidence from British Poultry Council ([IWF0034](#))

74 Written evidence from Lakeland Dairies Co-operative Society Limited ([IWF0035](#))

75 Written evidence from Ulster Farmers’ Union ([IWF0024](#))

76 Written evidence from National Farmers’ Union ([IWF0039](#))

77 Written evidence from Ulster Farmers’ Union ([IWF0024](#)), written evidence from National Farmers’ Union ([IWF0039](#)) and written evidence from British Veterinary Association ([IWF0027](#))

57. The Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland called for clarity on the movement of “halal and kosher meat products and ritual items” to ensure that Muslim and Jewish communities respectively in Northern Ireland are able to access them.<sup>78</sup>

*Logistics and haulage*

58. Sarah Hards noted that groupage (which involves different types of goods from many different types of business, from large manufacturers to very small cottage industries) was forgotten about in the original Protocol “and really has not been remembered for this one”:

“We have maybe five double-deck trailers coming over from GB every night. There are 90 pallets on each trailer. That could be 90 different consignments from 90 different companies across GB. How many of them will be green lane or red lane? We do not know.”

She gave the example of a tool supplier that brings in tools from Great Britain, only 10% of which go on to Ireland: “it would be an awful shame if it had to put every single one of those through the red lane and fully customs clear.”<sup>79</sup> Peter Summerton, Managing Director, McCulla Ireland, agreed that groupage had been “completely forgotten about”.<sup>80</sup>

59. Mr Summerton said that, for goods without a fixed end retail point, full sanitary and phytosanitary (SPS) and customs controls via the red lane would apply. Furthermore:

“A lot of the comparisons are made to the Protocol had it been implemented in full—it never could have been, because it would have crashed the supply chain—and not to the reality that people have come to expect, and that is compared to the Protocol as it was implemented. In other words, the green lane today is more cumbersome than the STAMNI<sup>81</sup> scheme that was in place. ... The brief that the Prime Minister gave was that he has removed any sense of a border in the Irish Sea. That quite simply is not the case.”<sup>82</sup>

60. Mark Tait argued that the green lane was in reality “a highly regulated express retail lane” that would benefit large supermarkets, but not hauliers, who “will now be locked into a red lane”. He said that those “bringing multiple pallets on multiple products from multiple customers ... are now concerned that we could end up red lane-ing every item of freight that we move”:

“The EU states that ... if you cannot prove that those goods are being sold and consumed in Northern Ireland by a Northern Ireland consumer, they are classed as ‘at risk’. ... For some of my customers, 90% of their sales are business-to-business sales, not business-to-consumer sales. Ninety per cent of those could be in Northern Ireland and 10%

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78 Joint written evidence from the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland ([IWF0025](#))

79 Written evidence from AM Logistics ([IWF0006](#)) and [QQ 35, 39](#)

80 [Q 35](#)

81 The Scheme for Temporary Agri-food Movements to Northern Ireland. See: Department of Agriculture, Environment and Rural Affairs, ‘STAMNI Compliance Declaration’ (Last updated 12 April 2021): <https://www.daera-ni.gov.uk/publications/stamni-compliance-declaration> [accessed 11 July 2023]

82 [QQ 35, 39, 41](#)

cross-border, but because 10% are cross-border it affects 100% of the movement of goods. So 100% of the movement of goods is classed as ‘at risk’ because of a small minority of goods that they sell cross-border.”<sup>83</sup>

*Manufacturing, SMEs and other sectors*

61. The Society of Motor Manufacturers and Traders stressed the significance of the expanded trusted trader scheme, and in particular the removal of the requirement for businesses to be established in or have physical premises in Northern Ireland. The broadened eligibility criteria for intermediate goods could represent a significant facilitation for a number of automotive businesses with manufacturing operations in Northern Ireland, including for buses and special purpose vehicles.<sup>84</sup>
62. ADS Group said that the green lane could benefit the aerospace industry, although they sought clarity on whether aerospace businesses surpassing the £2 million threshold would be included.<sup>85</sup>
63. Declan Gormley, Managing Director, Brookvent Ltd, predicted that, in the case of mixed loads, and for the manufacturing sector in particular, “the vast majority of businesses will just simply go with the red lane because the idea of trying to separate out or create channels to move goods, some staying in Northern Ireland and some staying on, will create another burden on the business.”<sup>86</sup>
64. Roger Pollen, Head of FSB Northern Ireland, said that the spirit of the Windsor Framework should mean that “the overall impact should be substantially reduced on all businesses”. However, it was important to bear in mind the disproportionate impact of goods movement processes on SMEs.<sup>87</sup>
65. Chartered Accountants Ireland stressed the importance of an education campaign for suppliers in Great Britain: “From previous experience, suppliers in GB have not been prepared for changes in terms of customs paperwork and this had significant knock-on effects for GB-NI trading when the Protocol became operational.”<sup>88</sup> Sarah Hards agreed.<sup>89</sup>

*Publication of Government guidance*

66. On 9 June 2023, the Government published further detail on the arrangements giving effect to the Windsor Framework.<sup>90</sup> This included guidance on: the green lane and the new UK Internal Market Scheme for trusted traders (and the commencement of the registration process ahead of the launch of the Scheme on 30 September); the launch of the Duty Reimbursement Scheme as of 30 June; the expansion of support via the Customs Duty Waiver Scheme from January 2024; confirmation of the continuation of the Trader Support Service; and the replacement of the STAMNI scheme with the Retail Movement Scheme from October 2023 (with formal registration to be launched in September).

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83 [QQ 27–8](#)

84 Written evidence from the Society of Motor Manufacturers and Traders ([IWF0030](#))

85 Written evidence from ADS Group ([IWF0014](#))

86 [QQ 61, 64](#)

87 [Q 37](#)

88 Written evidence from Chartered Accountants Ireland ([IWF0032](#))

89 [Q 37](#)

90 [The Windsor Framework - further detail and publications](#) [accessed 11 July 2023]

### *Conclusions*

67. **Business representatives and other stakeholders have stressed that the Windsor Framework's provisions in relation to the movement of goods are an improvement on the Protocol as originally designed. In particular, the green lane mechanism (including the increase in the business turnover threshold to £2 million and the ability of businesses based in Great Britain to participate in the UK Internal Market Scheme for trusted traders) will benefit a range of retail businesses, including larger retailers and some SMEs.**
68. **The new regime for agri-food retail trade in order to maintain supermarket supply chains, including for chilled meats, has also been welcomed. This has engendered optimism that the EU will be willing to show a flexible approach to the operation of these new mechanisms as practical issues emerge in their operation.**
69. **However, other retailers not able to meet the green lane's requirements, as well as meat for processing, live poultry, dairy, agri-intermediate goods and grain for animal consumption, goods for manufacturing, and goods where there is any uncertainty over the end destination, are likely to move via the red lane. Stakeholders also argued that for many businesses the movement of goods is likely to be more burdensome than the Protocol as it has operated to date, with the various grace periods and easements in place. *We invite the Government to respond to these concerns over the limited scope of the green lane, and to set out potential solutions to the problems that businesses have highlighted.***
70. **We also note concerns that the ability of retailers based in Great Britain to use the green lane to supply the Northern Ireland market could place Northern Ireland businesses, which still need to comply with EU rules for goods, at a competitive disadvantage in their own market. *We invite the Government to set out how it will address this issue.***
71. **Our witnesses consistently called for urgent clarification regarding the operation of the new framework for movement of goods, against the backdrop of the initial new processes both for the Windsor Framework, and the Border Target Operating Model applying from October 2023. On 9 June the Government published further detailed guidance on many of these issues. We will engage with business representatives in the autumn to ascertain to what extent this guidance addresses their concerns. *In the meantime, we invite the Government in its response to this report to summarise the new guidance, and to outline the timetable for further guidance to follow.***
72. **Business representatives expressed concern that the Windsor Framework does not address issues with groupage and mixed loads, and that those moving multiple products from multiple consumers may be compelled to use the red lane, even if only a small minority of such products are destined for the EU. *We invite the Government to clarify how the Windsor Framework's provisions will impact upon groupage and the movement of mixed loads, and what steps are being taken to address the concerns of businesses affected.***

73. **Business representatives also drew attention to a number of other outstanding or uncertain issues, including the movement of livestock from Northern Ireland to Great Britain and back, retagging of animals, and the movement of halal and kosher meat, as well as “ritual items” to Northern Ireland. *We invite the Government to clarify how each of these issues is being addressed.***
74. **We endorse the calls from business representatives for the Government to enhance its efforts to inform and educate businesses not only in Northern Ireland, but particularly in Great Britain, regarding the new arrangements for movement of goods between Great Britain and Northern Ireland. *We invite the Government to clarify how it will do so.***

### Labelling

#### *The UK and EU positions*

75. We set out below the UK and EU’s descriptions of the Windsor Framework’s requirements on labelling, as described in the Foreign Secretary’s evidence to the Committee, and the Commission’s ‘Questions and Answers’ document on the Windsor Framework.

### Box 3: The UK and EU positions

#### **The Government’s position**

“Under the new scheme, these requirements will be phased in, beginning in October 2023 with labelling on meat and fresh dairy. ... From October 2024 these requirements will be extended to include all other dairy products. During this first phase, these requirements will be applied only to meat and some dairy products that use the green lane—this will allow more time for industry to prepare for these changes. There will then be a final set of goods—composite products, fruit, vegetables and fish—that will also have to be labelled on a UK-wide basis from July 2025. This is in line with the Government’s longstanding position that any green lane product should be underpinned by proportionate labelling requirements to ensure that products are only sold in the UK, given that the unique arrangements we have secured provide for UK standards in areas such as food and drink safety standards. We have engaged closely with industry about these arrangements and will continue to do so. That will include providing more detailed guidance on these labelling requirements in the coming weeks to support preparations across the supply chain.”<sup>91</sup>

#### **The Commission’s position**

“Not for EU’ labelling is a very important safeguard to protect the EU Single Market. The Commission and the UK Government have agreed on requirements for the labelling of agri-food retail goods at different levels: individual, box, shelf signs and posters. The purpose is to inform consumers that those retail goods are not for the EU, rather only intended for sale to the final consumers in Northern Ireland. This will also ensure the traceability of these retail goods.

91 Supplementary written evidence from HM Government - Rt Hon James Cleverly MP, Secretary of State for Foreign, Commonwealth and Development Affairs ([IWF0043](#))

“For example, from 1 October 2023, prepacked meat and fresh milk will be individually labelled. Goods sold loose need only to be labelled at box level (e.g. apples) and easily visible signs would need to be placed next to the price tag on the shelves in the supermarkets. Posters would also be needed, placed in the supermarkets so that consumers know that the goods are not for EU. In order to minimise supply chains difficulties, it was agreed that labelling would be introduced gradually. As of 1 July 2025, all retail goods (other than goods sold loose) will be individually labelled except those not subjected to official controls at border control posts in the EU (e.g. confectionery, chocolate, pasta, biscuits, coffee, tea, liqueurs, canned fruit and vegetables, ketchup and similar shelf-stable products).”<sup>92</sup>

*Evidence received*

*Timescale and guidance*

76. The Northern Ireland Business Brexit Working Group noted that the initial 1 October 2023 deadline was becoming increasingly challenging in the absence of operational guidance across the supply chain, and against the backdrop of preparation for the next phase of the Border Target Operating Model commencing on 31 October: “Retailers and their suppliers will make every effort to be ready and compliant, but very significant work will be required, including changing processes across the supply chain and adopting new IT systems.”<sup>93</sup>
77. Stuart Anderson said that one large supermarket had told him: “‘We’re up for doing whatever is needed, whatever is required, but we need to know and understand and have a clear timetable’.”<sup>94</sup>
78. Andrew Opie warned:
- “We have no certainty that we will be able to comply with the requirements of the Windsor Framework by the 1 October deadline. We do not have sufficient detail. We do not know how the processes will work. ... Labelling changes do not happen overnight. They take months to stagger in terms of the catalogue of products. Certainly, some of the retailers will already be looking to see what it is feasible to send to Northern Ireland from October if we are in the situation where we cannot guarantee that we will be compliant.”<sup>95</sup>

*Viability and cost*

79. Martin Howe KC said that, while labelling might seem “a very simple thing to the Civil Service mind”, it could create a “very severe business impact”, including up-stream labelling by suppliers several weeks or months in advance.<sup>96</sup> Glyn Roberts, Chief Executive, Retail NI, said that the impact of labelling requirements on a small retailer was particularly significant.<sup>97</sup>

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92 *Questions and Answers: political agreement in principle on the Windsor Framework, a new way forward for the Protocol on Ireland / Northern Ireland* [accessed 11 July 2023]

93 Written evidence from the Northern Ireland Business Brexit Working Group ([IWF0041](#))

94 [Q 29](#)

95 [QQ 58, 61](#)

96 [Q 52](#)

97 [Q 61](#)

80. Peter Summerton warned that “the idea of robotic production lines moving into retail sealed packs—shelf-ready packs—and effectively having to take out every packet of ham to stick a label on it is just not going to work.”<sup>98</sup>

*Practicalities of a UK-wide scheme*

81. Confirmation of the Government’s intention to pursue a UK-wide labelling scheme emerged during the course of our inquiry. The Foreign Secretary explained that, following consultation with retailers:

“The centre of gravity of the voices that we had was that UK-wide labelling was the preferred option. ... The practical point is that retailers said that they would prefer a UK-wide regime. ... Northern Ireland is part of the UK, so it seems to me logical that for something we are asking Northern Ireland to do we should ask the UK to do. I am very comfortable with having a UK-wide regime.”<sup>99</sup>

82. Andrew Opie noted that the decision to adopt a UK-wide approach was a UK decision, not an EU requirement. It was “not a small commitment to change your labelling”, and some supermarkets who only trade in Great Britain had questioned why this was necessary.<sup>100</sup>
83. Mr Opie also noted that, while labelling requirements will begin in Northern Ireland in October, they are to begin in 2024 for the rest of the UK, as the Government first needed to consult the devolved Governments and then introduce legislation. This would create a period from October 2023 where labelling is only required in order to move meat and some dairy products into Northern Ireland via the green lane.<sup>101</sup>

*Publication of Government guidance*

84. Subsequently, on 9 June 2023, the Government published a set of guidance entitled *Labelling requirements for certain products moving from Great Britain to retail premises in Northern Ireland under the Retail Movement Scheme*. This confirmed that:

- In Phase 1, from 1 October 2023 all meat products and some fresh dairy products that are moving from Great Britain to Northern Ireland will need to be individually labelled. In the first phase, only products moving into Northern Ireland under the Retail Movement Scheme (and not those circulating only in Great Britain) will need to meet the labelling requirements.
- From Phase 2, the Government intends to introduce labelling requirements for Great Britain. From 1 October 2024, in addition to the phase 1 products, all milk and dairy products moving to Northern Ireland under the Retail Movement Scheme will need to be individually labelled. At this stage, all meat and dairy products in Great Britain will also need to be individually labelled.
- Under Phase 3, from 1 July 2025, composite products, fruit, vegetables and fish moving to Northern Ireland under the Retail Movement

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98 [Q 37](#)

99 [Q 76](#)

100 [Q 62](#)

101 [Q 63](#)



Scheme will also need to be individually labelled. The same products in Great Britain will also need to be individually labelled.<sup>102</sup>

### *Conclusions*

85. **Business representatives expressed significant concern about the lack of guidance around labelling requirements as the October 2023 deadline for the first phase of the Retail Movement Scheme approached. While we welcome the publication of guidance on 9 June, the amount of time for businesses to adapt their systems is now limited. We will seek feedback from business representatives in the autumn on their preparations for the new requirements. *In the meantime, we invite the Government in its response to this report to summarise this new guidance, and to outline the timetable for any further guidance to follow. We also invite the Government to set out how it will support businesses in adapting to these changes.***
86. **The Government has stated that its decision to adopt a UK-wide labelling scheme was in part to underpin Northern Ireland’s position within the UK. Yet the first phase of the Retail Movement Scheme will be limited in scope to relevant goods moving to Northern Ireland through the green lane. *We invite the Government to set out what assessment it has made of the implications of the staggered introduction of labelling requirements for Northern Ireland’s place within the UK internal market. We also invite the Government to provide clarity on the timetable for consultation and introducing legislation on subsequent phases of the Retail Movement Scheme applying across the UK as a whole.***

### **Tariff Rate Quotas (TRQs)**

#### *The UK and EU positions*

87. We set out below the UK and EU’s descriptions of the Windsor Framework’s provisions on Tariff Rate Quotas (TRQs), as described in the Foreign Secretary’s evidence to the Committee, and the Commission’s ‘Questions and Answers’ document on the Windsor Framework.

#### **Box 4: The UK and EU positions**

##### **The Government’s position**

“The Windsor Framework safeguards tariff-free movements of all types of steel into Northern Ireland. This will include specific new quotas for those categories of steel, categories 7 and 17, where there were specific issues last year. Importantly, there will also be a forward process for ensuring that Northern Ireland’s firms can access other goods subject to TRQs in the future.”<sup>103</sup>

102 [Labelling requirements for certain products moving from Great Britain to retail premises in Northern Ireland under the Retail Movement Scheme](#) [accessed 11 July 2023]

103 Written evidence from HM Government - Rt Hon James Cleverly MP, Secretary of State for Foreign, Commonwealth and Development Affairs ([IWF0042](#))

### The Commission's position

“Northern Ireland companies will now be able to use the EU’s TRQs for steel, providing them access to UK-origin steel in these categories. This will allow them to avoid having to pay the 25% tariff linked to the EU safeguard measures currently in place for steel imports into the EU. ... The EU and the UK have also agreed to continue working together on finding a joint solution for the use of TRQs by Northern Ireland businesses for other relevant commodities. Both sides agree that any solution will need to be based on available evidence and data, taking account of historic trade flows and providing appropriate protection to the EU Single Market.”<sup>104</sup>

The proposed Regulation on Tariff Rate Quotas enacting these changes set out that the easements for categories 7 and 17 steel relate in particular to the movement of Non-Alloy and Other Alloy Quarto Plates and Angles, Shapes and Sections of Iron or Non-Alloy Steel to Northern Ireland.<sup>105</sup> This Regulation was adopted by the Council on 30 May.

### *Evidence received*

88. The Northern Ireland Business Brexit Working Group welcomed the agreement on TRQs. However, they pointed out that the solutions to date only cover categories 7 and 17 of steel:

“Other steel products continue to move to NI tariff free, but the process has disrupted purchasing strategies, it can be burdensome, inefficient and costly. In essence, the current process involves clearing shipments both UK and EU quota simultaneously. From time to time one quota may be open but the other closed, particularly as in most cases shipments arrive in Northern Ireland at the end of the transportation route/supply chain. This leads to product being sourced from various rather than one territory or in the worst-case scenario being tied up at Docks until both the UK and EU quotas have reopened and can be cleared. This is largely caused by the UK and EU quotas not aligning.”

They said that importers would prefer simply to use one quota, or failing that, an acceptable Northern Ireland-specific quota.

89. The Northern Ireland Business Brexit Working Group added that access to TRQs is essential to maintain the competitiveness of agri-producers, since animal feed is a critical input cost for them. They welcomed the EU and UK’s commitment to finding solutions, but called for swift progress including meaningful consultation with stakeholders.<sup>106</sup> David Brown, the Dairy Council for Northern Ireland and Lakeland Dairies Co-operative Society Limited likewise stressed the importance of access to TRQs for grain imported to Northern Ireland to ensure that the price of grain for farmers is competitive.<sup>107</sup>

104 *Questions and Answers: political agreement in principle on the Windsor Framework, a new way forward for the Protocol on Ireland / Northern Ireland* [accessed 11 July 2023]

105 Regulation of the European Parliament and of the Council amending Regulation (EU) 2020/2170 as regards the application of Union tariff rate quotas and other import quotas to certain steel products transferred to Northern Ireland, [2023/0063 \(COD\)](#) 17 May 2023

106 [Q 28](#) and written evidence from the Northern Ireland Business Brexit Working Group ([IWF0041](#))

107 [Q 28](#), written evidence from the Dairy Council for Northern Ireland ([IWF0020](#)) and Lakeland Dairies Co-operative Society Limited ([IWF0035](#))

*Conclusion*

90. **Business representatives are supportive of the solution for Tariff Rate Quotas for certain categories of steel. However, we note their concerns about the impact of UK and EU quotas on movements to Northern Ireland of other categories of steel. We also note their calls for solutions on access to Tariff Rate Quotas for grain imported to Northern Ireland to ensure price competitiveness. While welcoming the EU and UK’s commitment to continued dialogue on Tariff Rate Quotas, we stress the need for swift progress to resolving these issues, including through substantive consultation with business representatives.**

*Parcels**The UK and EU positions*

91. We set out below the UK and EU’s descriptions of the Windsor Framework’s provisions on the movement of parcels, as described in the Foreign Secretary’s evidence to the Committee, and the Commission’s ‘Questions and Answers’ document on the Windsor Framework.

**Box 5: The UK and EU positions****The Government’s position**

“The Windsor Framework safeguards parcel deliveries to Northern Ireland consumers, by removing the requirement for a customs declaration that the old Protocol put in place, reflecting the significant importance of parcel deliveries for day-to-day life in Northern Ireland.

“The new arrangement means that parcels can be sent to friends and family in Northern Ireland, with no requirements on either the sender or recipient. It also scraps declarations for crucial e-commerce movements from businesses to consumers. Instead, the UK has agreed that authorised parcel operators will manage a process of sharing data to monitor and manage any risks of smuggling into the EU market. This will mean Northern Ireland consumers will uniquely be able to receive parcels from both the UK and EU without customs burdens. ... To do this, we have changed the legal definition of goods classified as ‘not at risk’ of entering the EU to ensure that consumer parcel deliveries are always classified as goods destined to stay within the UK.

“Meanwhile, for movements between businesses, we will ensure the same internal market scheme in place for freight is available for parcels, meaning they can benefit from the green lane, avoiding tariffs and relying on commercial information when moving to Northern Ireland.”<sup>108</sup>

108 Written evidence from HM Government - Rt Hon James Cleverly MP, Secretary of State for Foreign, Commonwealth and Development Affairs ([IWF0042](#))

### The Commission's position

“Business-to-consumer (‘B2C’) parcels, e.g., a person in Northern Ireland ordering a product online from an e-commerce platform, sent by direct transport from Great Britain to Northern Ireland, will benefit from simplified customs processes compared to normal freight. This will be achieved through the involvement of fast parcel operators (e.g. DHL or UPS), and other economic operators sending parcels (e.g. Amazon) registered as authorised carriers. This also concerns the UK’s designated postal service (Royal Mail). The carriers will provide commercial data to the UK customs authorities prior to delivery of the goods. The authorised carrier scheme will be monitored by the relevant UK competent authorities to ensure that carriers respect the relevant criteria. The UK authorities will carry out their monitoring activities in accordance with operational arrangements agreed with the EU.

“The main customs requirements will be entirely waived for consumer-to-consumer (‘C2C’) parcels. ...Business-to-Business (‘B2B’) parcels will enjoy the same facilitations as for normal freight movements if one of the businesses is a trusted trader.”<sup>109</sup>

### *Evidence received*

92. Andrew Opie said that the new provisions were “really good news”, and “one of the bright spots of the Windsor Framework”, in particular for consumers in Northern Ireland. He said that it would be a “boon” for SMEs in Great Britain, who would be encouraged to supply the Northern Ireland market. He also thought that the new process would be “very easy for business”.<sup>110</sup> ADS Group said that the parcels arrangements had the potential to benefit aerospace companies.<sup>111</sup>
93. The Northern Ireland Business Brexit Working Group acknowledged improvements to current customs requirements for parcels, but stressed that parcel carriers were seeking greater clarity on the data they will need to provide to HMRC for movements, and on how the new Authorised Carrier Scheme will operate.<sup>112</sup> Stuart Anderson added that the decision by Great Britain-based operators to stop serving the Northern Ireland market under the original Protocol following the last-minute publication of guidance on parcels “should be a warning for all of us: that in this process we need to ensure that the systems and processes are in place within the right timeframe.”<sup>113</sup>
94. Dr Viviane Gravey, Senior Lecturer, Dr Billy Melo Araujo, Senior Lecturer, and Dr Lisa Claire Whitten, Research Fellow, Post Brexit Governance NI, Queen’s University Belfast, stated that, while the proposals represented a potential reduction in customs checks compared to the Protocol as originally agreed, they marked an increase on the checks that had been applied to date.<sup>114</sup>
95. Peter Summerton agreed that there would still be customs processes for most movements other than consumer-to-consumer: “we would have to

109 *Questions and Answers: political agreement in principle on the Windsor Framework, a new way forward for the Protocol on Ireland / Northern Ireland* [accessed 11 July 2023]

110 [QQ 61, 68](#)

111 Written evidence from ADS Group ([IWF0014](#))

112 Written evidence from Northern Ireland Business Brexit Working Group ([IWF0041](#))

113 [Q 32](#)

114 Written evidence from Dr Viviane Gravey, Dr Billy Melo Araujo and Dr Lisa Claire Whitten ([IWF0022](#))

assume that if one of the parties is not a trusted trader that would mean that business-to-business parcels will be treated as a third country ... to EU export.”<sup>115</sup>

96. Dr Anna Jerzewska queried whether under the Authorised Carrier Scheme, fast parcel operators such as UPS, FedEx or Amazon would take legal liability for data that is submitted.<sup>116</sup>

#### *Publication of Government guidance*

97. On 9 June, the Government published further guidance on the movement of parcels. It confirmed that the new arrangements would apply as of 30 September 2024, and that “the Government will continue to work closely with parcel operators to develop these arrangements and provide support in preparing for them, including further guidance later this year.”<sup>117</sup>
98. In that context, we note that the Postal Packets (Miscellaneous Amendments) Regulations 2023 have been laid before Parliament. In its report on the Regulations, the Secondary Legislation Scrutiny Committee noted that they would provide the powers to police the green lane and the risks of smuggling into the EU, including by seizing, detaining or inspecting parcels moving from Great Britain to Northern Ireland, and by charging duty where relevant; for example, for goods destined for onwards movement into the EU.<sup>118</sup>

#### *Conclusions*

99. **Business representatives have broadly welcomed the Windsor Framework’s provisions on parcels, in particular for consumer-to-consumer and business-to-consumer movements, and have expressed optimism that they will help ensure that Great Britain-based firms are willing to supply the Northern Ireland market. While the provisions are less burdensome than the Protocol as originally conceived, they represent an increase in customs processes for business movements compared to the Protocol as it has operated to date, in particular for business-to-business movements where suppliers are not trusted traders.**
100. **Business representatives also sought further clarity and guidance, as well as an education and communication strategy, ahead of the introduction of the new systems on 30 September 2024. We note the Government’s publication of further guidance on 9 June 2023, and we will seek feedback from business representatives in the autumn on the extent to which this addresses their concerns. *In the meantime, we invite the Government in its response to this report to summarise this new guidance, and to outline the timetable for further guidance to follow. In so doing, we invite the Government to provide clarity on data sets and commodity information requirements, legal liability, and on the operation of the Authorised Carrier Scheme.***

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115 [Q 40](#)

116 [Q 54](#)

117 [The Windsor Framework - further detail and publications](#) [accessed 11 July 2023]

118 Secondary Legislation Scrutiny Committee, [Drawn to the special attention of the House: Draft Postal Packets \(Miscellaneous Amendments\) Regulations 2023; Russia \(Sanctions\) \(EU Exit\) \(Amendment\) \(No. 3\) Regulations 2023; Correspondence: Draft Pensions Dashboards \(Amendment\) Regulations 2023](#) (46th Report, Session 2022–23, HL Paper 231)

## Plants, seeds, machinery and trees

### *The UK and EU positions*

101. We set out below the UK and EU’s descriptions of the Windsor Framework’s provisions on plants, seeds, machinery and trees, as described in the Foreign Secretary’s evidence to the Committee, and the Commission’s ‘Questions and Answers’ document on the Windsor Framework.

### **Box 6: The UK and EU positions**

#### **The Government’s position**

“The old Protocol put a series of certification requirements, checks and prohibitions in place for plants and plant products. This did not reflect any real-world biosecurity risk and had real impacts on longstanding flows to Northern Ireland gardeners, farmers, garden centres and environmental projects.

“This has been addressed comprehensively through the deal. Most plants and seeds staying in Northern Ireland will move from Great Britain on a virtually identical basis to those moving elsewhere within the UK. Instead of full EU certification, plants and seeds will move under the framework of the existing UK-wide plant passport scheme, in line with traders throughout the UK. That means that rather than paying £150 per movement into Northern Ireland, growers and businesses can pay £120 a year to be part of the UK scheme, as they did before the Protocol came into force.

“Previously banned seed potatoes will once again be available from other parts of the UK while remaining prohibited in Ireland. We have also paved the way to remove bans on 11 native British and other commercially important plant species by the next planting season, as industry has called for, and begun the process to remove prohibitions on an additional set of plant species. ...

“As we work to put these new arrangements into effect, we will be engaging closely with industry and broader stakeholders on their operation to ensure that plants are able to flow smoothly so that gardeners and growers in Northern Ireland can access plants and seeds.”<sup>119</sup>

#### **The Commission’s position**

“A way was also found for plants, shrubs, trees and seeds to be able to move into Northern Ireland, supporting garden centres and farming. ... The Commission and the UK Government have found a solution for certain plants for planting and agricultural or forestry machinery to move to Northern Ireland from other parts of the UK, on the basis of a special plant health label.

“A solution has also been found to allow seed potatoes, previously prohibited, to be moved from Great Britain to Northern Ireland. Seed potatoes should bear a plant health label, be dispatched by authorised operators and be subject to inspections. ...

119 Written evidence from HM Government - Rt Hon James Cleverly MP, Secretary of State for Foreign, Commonwealth and Development Affairs ([IWF0042](#)) and supplementary written evidence from HM Government - Rt Hon James Cleverly MP, Secretary of State for Foreign, Commonwealth and Development Affairs ([IWF0043](#))

“Following a positive opinion by the European Food Safety Agency for two tree varieties (*Ligustrum delavayanum* and *Ligustrum japonicum*), the Commission has today granted the relevant authorisations. These trees will therefore be able to move to Northern Ireland from Great Britain with a plant health label.”<sup>120</sup>

The Commission Implementing Regulation in relation to the latter tree varieties was published on 27 February.

*Evidence received*

102. The National Farmers’ Union and the Ulster Farmers’ Union noted that seeds and plants for planting in Northern Ireland soil, and machinery being moved from Great Britain to Northern Ireland via a special plant label, would move via the green lane. However, they wanted to see all species of trees that remain prohibited from moving from Great Britain, including cherry, hazel and hawthorn, made available for planting in Northern Ireland.<sup>121</sup> David Brown said that such plants are vital for the ecosystem, as they make up hedgerows.<sup>122</sup>
103. David Brown also said that the process for evaluating the case for prohibitions to be lifted has hitherto been particularly onerous. He called for a process to expedite the process for approval of the 11 species cited by the Government. At the same time, he described the agreement on the movement of machinery as a “significant move forward”.<sup>123</sup>
104. The Ulster Farmers’ Union also noted that the ban on seed potatoes moving from Great Britain to Northern Ireland had been lifted as of spring 2024 for farmers only. They argued that this provided potential for Northern Ireland farmers to be the “gateway to Europe” for seed potato sales of GB varieties to the EU.<sup>124</sup>
105. A small business selling packaging materials for use in the agriculture industry expressed concern that seed potatoes cannot be purchased from a mail order catalogue, but only by a business for retailing to a customer. They noted that mail order plant companies were unlikely to start supplying to the general public in Northern Ireland again.<sup>125</sup>
106. In that context, we note media reports that seed potatoes can only travel to farmers or wholesalers, rather than consumers or garden centres, and many trees (other than the 11 species that might have their bans rescinded) remain prohibited, including yew, honeysuckle, willow, hazel, cherry, dogwood, birch, chestnut, beech, fig, ash, witch-hazel, jasmine, walnut, rowan and poplar. One prohibited genus, *Prunus*, contains 430 species, including every type of cherry, almond, peach, plum, apricot and nectarines. Furthermore, it was reported that “the fine print of the deal points to GB plants and trees only being able to come into NI if they are moving between two registered

120 *Questions and Answers: political agreement in principle on the Windsor Framework, a new way forward for the Protocol on Ireland / Northern Ireland* [accessed 11 July 2023]

121 Written evidence from National Farmers’ Union ([IWF0039](#)) and Ulster Farmers’ Union ([IWF0024](#))

122 [Q 25](#)

123 [Q 32](#)

124 Written evidence from Ulster Farmers’ Union ([IWF0024](#))

125 Written evidence from Anonymous ([IWF0007](#))

operators. This change would end online shopping for plants and trees from Britain.”<sup>126</sup>

*Conclusion*

107. **The farming and horticultural sectors have welcomed the easements for plants, seeds, machinery and trees as far as they go. However, they also pointed out that the movement from Great Britain to Northern Ireland for planting of a large number of species, including several of key importance to the ecosystem, remains prohibited, and called for the process for approvals to be expedited. We also note concerns that plants and trees will only be available via registered operators such as garden centres, and not via online shopping. We invite the Government to confirm whether this is the case, and to set out how it will address concerns that many important species remain prohibited. We also invite the Government to provide an update on the mechanism for removal of the ban on 11 further species by the next planting season, and to set out how the process for such approvals can be expedited.**

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126 Sam McBride: ‘Buying GB plants online seems set to be banned under EU deal... and NI Secretary misled public’, *Belfast Telegraph* (18 March 2023) available at: <https://www.belfasttelegraph.co.uk/opinion/columnists/sam-mcbride/buying-gb-plants-online-seems-set-to-be-banned-under-eu-deal-and-ni-secretary-misled-public/1749496656.html> [accessed 11 July 2023]



## CHAPTER 4: HUMAN AND VETERINARY MEDICINES, AND MOVEMENT OF PETS

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### Human medicines

#### *The UK and EU positions*

108. We set out below the UK and EU’s descriptions of the Windsor Framework’s provisions on human medicines, as described in the Foreign Secretary’s evidence to the Committee, and the Commission’s ‘Questions and Answers’ document on the Windsor Framework.

#### **Box 7: The UK and EU positions**

##### **The Government’s position**

“We have delivered an unprecedented carve-out from EU rules that fully safeguards the supply of medicines into Northern Ireland, and ensures it is for the MHRA [Medicines and Healthcare products Regulatory Agency] to approve all drugs for the whole UK market—providing a long-term, durable basis for medicines supplies. This removes requirements of the Falsified Medicines Directive and removes the role of the European Medicines Agency [EMA] regarding innovative drugs.”<sup>127</sup>

##### **The Commission’s position**

“The new arrangement will ensure that [novel] medicines will be authorised and placed on the market in Northern Ireland in accordance with UK rules and UK authorisation procedures only. EU rules and authorisations will not apply to these medicines any more. In addition, prescription medicines placed on the Northern Ireland market should not carry EU safety features (unique identifier/barcode) that are obligatory in the EU to prevent illegal circulation of medicines so that they are easily distinguishable from those placed on the EU market.

“The new rules go hand in hand with appropriate safeguards to ensure that UK authorised medicines do not end up on the market of any EU Member State. Individual packs of all medicines placed on the Northern Ireland market should thus bear a label indicating ‘UK only’, the UK should continuously monitor their placing on the Northern Ireland market and the Commission will be able unilaterally [to] suspend the new rules in case the UK does not comply with its obligations.”<sup>128</sup>

The Commission Regulation giving effect to these changes was published on 27 February, and adopted by the Council on 30 May.

#### *Evidence received*

109. The pharmaceutical industry expressed strong support for the Windsor Framework’s provisions.
110. The British Medical Association (BMA) stated that it will mean that the pharmaceutical industry will be able to produce a single medicines pack for the whole of the UK, thereby eliminating concerns over the commercial viability of packs for Northern Ireland only. The BMA stressed that the

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127 Written evidence from HM Government - Rt Hon James Cleverly MP, Secretary of State for Foreign, Commonwealth and Development Affairs ([IWF0042](#))

128 [Questions and Answers: political agreement in principle on the Windsor Framework, a new way forward for the Protocol on Ireland / Northern Ireland](#) [accessed 11 July 2023]

disapplication of the EU Falsified Medicines Directive for medicines supplied to Northern Ireland would protect medicine supply. Most importantly of all, the supply of UK medicines to Northern Ireland has been permanently protected, ensuring patients in Northern Ireland will have access to the same medicines as patients in Great Britain.<sup>129</sup>

111. The Healthcare Distribution Association UK said that the UK and EU had “put patients first and we believe that the agreement should allow medicines to be distributed from GB to NI, from an operational perspective, as close to pre-Brexit methods as is achievable.” They called for stakeholder engagement to ensure that industry is able to meet the target date of January 2025.<sup>130</sup>
112. The NHS Confederation welcomed the Windsor Framework as a “very positive result”, reflecting the solutions they had advocated to this Committee.<sup>131</sup> Alliance Healthcare (Distribution) Ltd, the National Pharmacy Association, the Royal College of Podiatry and the Ethical Medicines Industry Group all welcomed the Windsor Framework on similar grounds.<sup>132</sup>
113. PAGB, the consumer healthcare association, welcomed the agreement. However, they sought clarity on issues including timelines for new innovative products and labelling, the process for products already approved via the Centrally Authorised Procedure, and the supply of medical devices from Great Britain to Northern Ireland.<sup>133</sup> Teva UK Limited also welcomed the proposals. They sought clarification on labelling requirements and timelines, and on whether the disapplication of rules relating to the EU Falsified Medicines Directive included all safety features, given the importance for patient safety of retention of an anti-tampering device.<sup>134</sup>
114. The joint submission by the Nuffield Trust and the Health and International Relations Monitor argued that the Windsor Framework addressed most of the problems that industry stakeholders have flagged up. However, they suggested that the shift to UK medicine authorisations may mean that Northern Ireland gets slower access to cutting-edge products than Ireland. Furthermore, new labelling requirements will add a small but real cost. They also pointed out that Northern Ireland will remain aligned with the EU for medical devices, but that this is not currently a pressing concern as supply comes primarily from the EU.<sup>135</sup>

#### *Publication of Government guidance*

115. On 9 June, the Government published an announcement summarising the Windsor Framework provisions on medicines, confirming that they will commence on 1 January 2025, and stating that ‘UK only’ labels may be placed anywhere on a medicine pack. It stated that “comprehensive guidance on the requirements for medicines to be placed on the market in Northern Ireland will be provided in due course. This will include formal guidance covering labelling requirements and authorisations from the MHRA.” It also

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129 Written evidence from British Medical Association Northern Ireland ([IWF0016](#))

130 Written evidence from Healthcare Distribution Association UK ([IWF0029](#))

131 Written evidence from NHS Confederation ([IWF0011](#))

132 Written evidence from Alliance Healthcare (Distribution) Ltd ([IWF0031](#)), National Pharmacy Association ([IWF0021](#)), Royal College of Podiatry ([IWF0017](#)), and Ethical Medicines Industry Group ([IWF0018](#))

133 Written evidence from PAGB ([IWF0012](#))

134 Written evidence from Teva UK Limited ([IWF0033](#))

135 Joint written evidence from Nuffield Trust and Health and International Relations Monitor ([IWF0028](#))

confirmed that the Northern Ireland MHRA Authorised Route (NIMAR), which has facilitated medicines supply to Northern Ireland, will continue to function in the meantime. There will also be a bridging mechanism for six months after 1 January 2024 when the MHRA licenses a product before the EMA. The Government committed to close engagement with industry on next steps as further guidance and operational arrangements are developed.<sup>136</sup>

### *Conclusions*

116. **The pharmaceutical industry has strongly welcomed the Windsor Framework’s provisions on human medicines, arguing that they provide sustainable solutions to the problems with medicine supply to Northern Ireland. Industry has welcomed in particular the approval and licensing of products on a UK-wide basis by the Medicines and Healthcare products Regulatory Agency (MHRA), provision for the same packaging and labelling requirements across the UK, and the disapplication of the Falsified Medicines Directive in Northern Ireland. Witnesses stressed the need for further information on the operational requirements of the new arrangements. We welcome the further clarification as set out in the Government’s announcement of 9 June, and look forward to further clarification in the months ahead. We invite the Government to intensify its engagement with stakeholders as the pharmaceutical industry prepares for the commencement of the new measures on 1 January 2025. We also invite the Government to respond to the calls from industry representatives for clarity over labelling requirements, safety features, the supply of medical devices and concerns that Northern Ireland may get slower access to cutting-edge products than Ireland.**

### **Veterinary medicines**

#### *The UK and EU positions*

117. We set out below the UK and EU’s positions on veterinary medicines, as described in the Foreign Secretary’s evidence to the Committee, and in Commission statements.

### **Box 8: The UK and EU positions**

#### **The Government’s position**

“The Government is clear that the only long-term practical solution on veterinary medicines, as with human medicines, is to guarantee the existing and long-established flows of trade between Great Britain and Northern Ireland, on which so many people and businesses rely. ...

<sup>136</sup> [Windsor Framework medicines announcement](#) [accessed 11 July 2023]

“A three-year extension to the initial grace period ... protects supplies of veterinary medicines in the immediate term. The notice providing that extension underlined the importance of ongoing work between the UK and EU to monitor progress and engage with stakeholders. To that end we are working closely with industry groups and other relevant stakeholders, and continuing to liaise with the EU on these arrangements.”<sup>137</sup>

### **The Commission’s position**

On 19 December 2022, Vice-President Šefčovič announced that the grace period was being extended until December 2025 “to ensure the continuity of supplies of veterinary medicines to Northern Ireland”, and “giving ample time to adapt”.<sup>138</sup> The Commission did not explicitly refer to veterinary medicines in its documentation accompanying the Windsor Framework.

### *Evidence received*

118. The British Veterinary Association welcomed the extension of the grace period. They explained that the requirement under EU rules for veterinary medicines to be batch tested and released to move from Great Britain to Northern Ireland, along with the requirement for a Marketing Authorisation Holder to be based in Northern Ireland or the EU, made it likely that companies would withdraw products from the Northern Ireland market. Failure to agree a permanent solution could therefore see Northern Ireland lose access to 51% of the veterinary medicines it currently receives, affecting all sectors—farm, equine, pigs, poultry and pets—with significant implications for animal health and welfare, public health, trade and the agricultural economy.<sup>139</sup>
119. The National Office of Animal Health (NOAH), the trade association for the animal health industry, made similar points, stressing that the viability of veterinary medicine supply was dependent on Northern Ireland remaining part of the UK-wide market.<sup>140</sup> The National Farmers’ Union argued likewise.<sup>141</sup>
120. The Ulster Farmers’ Union warned that, without a permanent resolution, over 1,700 products in the veterinary medicine portfolio would be discontinued in the Northern Ireland marketplace. This was because switching to EU sources would make it financially unviable for companies to supply the Northern Ireland market.<sup>142</sup>
121. David Brown said that until the latter part of 2022, there was an expectation in the EU that traditional trade routes would adjust and products would be sourced from Ireland, “but two years on it is fairly evident that trade does not simply reorientate to ROI or EU.” He said that the EU’s underlying fear

137 Written evidence from HM Government - Rt Hon James Cleverly MP, Secretary of State for Foreign, Commonwealth and Development Affairs ([IWF0042](#)) and supplementary written evidence from HM Government - Rt Hon James Cleverly MP, Secretary of State for Foreign, Commonwealth and Development Affairs ([IWF0043](#))

138 *Statement by Vice-President Maroš Šefčovič on the movement of veterinary medicines from Great Britain to Northern Ireland, Cyprus, Ireland and Malta* [accessed 11 July 2023]

139 Written evidence from British Veterinary Association ([IWF0027](#))

140 Written evidence from NOAH ([IWF0026](#))

141 Written evidence from National Farmers’ Union ([IWF0039](#))

142 Written evidence from Ulster Farmers’ Union ([IWF0024](#))

that the UK may lower its standards (therefore threatening the integrity of the Single Market) was overstated.<sup>143</sup>

122. The Dairy Council for Northern Ireland stressed that a permanent solution was needed to protect Northern Ireland's access to the EU Single Market. A failure to resolve the issue would risk the proliferation of a black market for veterinary medicines on the island of Ireland.<sup>144</sup> Lakeland Dairies Co-operative Society Limited also stressed that veterinary medicines must comply with EU standards so as to protect the food supply chain on the island of Ireland. They said that these food supply chain implications meant that the issue is not as easy to resolve as for human medicines.<sup>145</sup>

*Potential solutions*

123. The British Veterinary Association proposed the following solutions:
- Applying a 'grandfather rule' to allow veterinary medicines that were aligned with EU regulations prior to UK withdrawal from the EU to continue to be supplied to Northern Ireland, with newly licensed veterinary medicines adhering to EU rules;
  - Using the precedents of existing EU trade agreements which allow food products into the EU;
  - A minor amendment to EU law to allow veterinary medicines with a Marketing Authorisation Holder located in Great Britain to be used in Northern Ireland.<sup>146</sup>
124. NOAH advocated:
- Allowing the Marketing Authorisation Holder for products on the Northern Ireland market to be located either in the UK or EU;
  - Removing the requirement for batch testing and release to be repeated for medicines moving from Great Britain to Northern Ireland if it has already been carried out in Great Britain or the EU;
  - Removing the requirement for manufacturing authorisation of import licences for medicines supplied from Great Britain to Northern Ireland;
  - Allowing companies located in Great Britain to use a single pack and leaflet when supplying markets in both Great Britain and Northern Ireland.<sup>147</sup>
125. The Ulster Farmers' Union argued that the current grace period should be made permanent, on the basis of a commitment by the Government that it will strengthen or at the very least maintain standards shared with the EU.<sup>148</sup>
126. David Brown said that the Ulster Farmers' Union continued to argue for a UK-EU SPS agreement, which "would resolve an awful lot of issues for the

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143 [Q 30](#)

144 Written evidence from Dairy Council for Northern Ireland ([IWF0020](#))

145 Written evidence from Lakeland Dairies Co-operative Society Limited ([IWF0035](#))

146 Written evidence from British Veterinary Association ([IWF0027](#))

147 Written evidence from NOAH ([IWF0026](#))

148 Written evidence from Ulster Farmers' Union ([IWF0024](#))

agri-food sector. Maybe the EU thinks that this has the potential to come in the future.”<sup>149</sup>

### *Conclusions*

127. **While welcoming the extension of the grace periods for veterinary medicines until the end of 2025, the veterinary, farming and agri-food sectors have expressed serious concern that a mutually agreed solution has yet to be reached. The Commission has stated that the grace period is designed to provide the sector with “ample time to adapt”. Yet industry representatives have warned that, without a permanent solution, the supply of over 50% of veterinary medicines to Northern Ireland may be discontinued, posing a risk both to animal and human health, and to agri-food supply chains.**
128. **This issue needs to be resolved now rather than in 2025 when the cliff-edge is looming. *The UK and the EU must therefore engage urgently together with industry stakeholders to agree a sustainable and mutually agreed solution that protects both the supply of veterinary medicines from the UK and Northern Ireland’s access to the EU Single Market for goods, at the same time protecting complex supply chains between Northern Ireland, Great Britain and Ireland.***
129. **We will scrutinise this issue further in the autumn. *In the meantime, we invite the Government’s view on the various proposed solutions put forward by industry stakeholders, including a UK-EU sanitary and phytosanitary (SPS) agreement, and urge the Government to intensify its engagement with the EU and with industry in order to identify a sustainable solution as a matter of urgency.***

### *Movement of pets*

#### *The UK and EU positions*

130. We set out below the UK and EU’s descriptions of the Windsor Framework’s provisions on the movement of pets, as described in the Foreign Secretary’s evidence to the Committee, and the Commission’s ‘Questions and Answers’ document on the Windsor Framework.

### **Box 9: The UK and EU positions**

#### **The Government’s position**

“This agreement provides a straightforward system for pet movements that ends any uncertainty, removing costly, harmful and unnecessary processes for pet movements into Northern Ireland. This will allow pet movements to continue easily ... [by] recognising for these purposes the United Kingdom’s rabies and tapeworm-free status.

“For pet owners visiting Northern Ireland from Great Britain but not travelling on to Ireland, the only requirement will be to confirm that the pet is microchipped and will not move into the EU. This will be in the form of a travel document issued for the lifetime of a pet, available online and electronically in a matter of minutes; or an equally seamless process built into the booking process for a flight or ferry.

“For pets travelling NI to GB and back, no documentation, declarations, checks or health treatments will be required.”<sup>150</sup>

### **The Commission’s position**

“People will be able to travel with their pets between Great Britain and Northern Ireland in an easier way. A simple pet travel document and a declaration by the owner that the pet will not go to the EU will suffice. Pets from Northern Ireland, moving to Great Britain and then back to Northern Ireland, need only to be identified by a microchip.”<sup>151</sup>

### *Evidence received*

131. The British Veterinary Association stressed that the requirements under the Protocol for pet owners to obtain an EU pet passport, an Animal Health Certificate and a rabies vaccination were unnecessary, in particular given that rabies is not present in the UK. The veterinary profession therefore welcomed the removal of these checks. They stated that the agreement “directly addresses the concerns of many pet owners, and will reduce the burden on vets, enabling pet movements to continue as easily as they did before Brexit.”<sup>152</sup>
132. The Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland welcomed the proposals, and the Government’s commitment to work with ferry companies to ensure that their online guidance reflects the new arrangements and gives travellers the confidence to travel with their pets.<sup>153</sup> Dr Esmond Birnie noted that under the Windsor Framework “we would get closer to free movement of (microchipped) pets across the Irish Sea.”<sup>154</sup>

### *Conclusions*

133. **Stakeholders have welcomed the Windsor Framework’s provisions on movement of pets as a proportionate approach compared to the Protocol as originally agreed. There will be no requirements on pets moving from Northern Ireland to Great Britain, although those moving pets from Great Britain to Northern Ireland will be required to microchip their pets and obtain a travel document valid for the lifetime of the pet. We urge the Government to work with travel companies to ensure that pet owners are aware of the new requirements.**

150 Written evidence from HM Government - Rt Hon James Cleverly MP, Secretary of State for Foreign, Commonwealth and Development Affairs ([IWF0042](#))

151 [Questions and Answers: political agreement in principle on the Windsor Framework, a new way forward for the Protocol on Ireland / Northern Ireland](#) [accessed 11 July 2023]

152 Written evidence from British Veterinary Association ([IWF0027](#))

153 Joint written evidence from the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland ([IWF0025](#))

154 Written evidence from Dr Esmond Birnie ([IWF0037](#))

## CHAPTER 5: VAT, EXCISE AND STATE AID

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### VAT and excise

#### *The UK and EU positions*

134. We set out below the UK and EU's descriptions of the Windsor Framework's provisions on VAT and excise, as described in the Foreign Secretary's evidence to the Committee, and the Commission's 'Questions and Answers' document on the Windsor Framework.

#### **Box 10: The UK and EU positions**

##### **The Government's position**

"The changes introduced through the Windsor Framework guarantee Northern Ireland's position within the UK's VAT and excise area, maintain frictionless trade with the wider EU, and establish a clear process for addressing issues which may arise in future.

"Northern Ireland is already benefiting from changes which were previously blocked by the old Protocol. This includes VAT reliefs for the installation of energy saving materials which were introduced on 1 May, changes to alcohol duty which will take effect across the whole of the UK in August, and exemption from burdensome upcoming EU rules on VAT accounting. The Framework has also removed limits otherwise put in place by the old Protocol on the number of VAT zero rates which can be applied in Northern Ireland, and NI businesses are protected from having to apply lower VAT registration thresholds.

"The Windsor Framework also establishes the Enhanced Coordination Mechanism for VAT and excise. This will consist of lead UK and EU experts, and will meet regularly to discuss upcoming changes to EU and UK VAT and excise rules. This mechanism will be able, should it be necessary, to propose changes to EU rules which the Joint Committee may adopt through legally binding decisions, allowing us to respond to any further issues that may arise in the future."<sup>155</sup>

##### **The Commission's position**

"The Commission and the UK Government have agreed that the UK can apply reduced VAT rates on goods supplied and installed in immovable property (e.g. a heat pump for a house or a wind turbine for a residential property) located in Northern Ireland, even if the applicable UK VAT is below EU minimum rates. As this applies to goods installed in immovable property, there is no risk that these goods can enter the EU Single Market. The UK can also apply reduced VAT rates to a higher number of categories of goods than allowed under EU law, as there are no concerns for such goods in relation to the EU's own resources.

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155 Written evidence from HM Government - Rt Hon James Cleverly MP, Secretary of State for Foreign, Commonwealth and Development Affairs ([IWF0042](#)) and supplementary written evidence from HM Government - Rt Hon James Cleverly MP, Secretary of State for Foreign, Commonwealth and Development Affairs ([IWF0043](#))



“Second, the UK does not need to apply the special EU VAT scheme for small enterprises in Northern Ireland. ... This exclusion is justified by the fact that the EU scheme would have been difficult to apply in Northern Ireland, as the Protocol only applies to goods, while the exemption scheme also applies to services. When the UK applies its own VAT exemption scheme for small enterprises, they will still need to respect EU rules on the annual turnover threshold. Respecting the EU rules on the annual turnover threshold will ensure that larger enterprises in Northern Ireland cannot be considered as small enterprises and thereby benefit from VAT exemptions. This will protect a level playing field with the EU.

“Third, the Commission and the UK Government have agreed to explore establishing a list of goods not being at risk of entering the EU and which would not be subject to EU VAT rules. A detailed list of such goods could be established with a validity of five years subject to continuous review. It has also been agreed to evaluate current VAT arrangements for cross-border refunds. ...

“The Commission and the UK Government have agreed that the UK may be able to tax all alcoholic beverages based on their alcoholic strength in Northern Ireland, thereby diverging from EU rules on the structure of excise duties, and to apply reduced excise duty rates to all alcohol and alcoholic beverages served for immediate consumption in hospitality venues. The UK will not be able to apply any duty rate below the EU minima.

“The UK will also be able to apply its own small producer’s scheme for alcoholic beverages in Northern Ireland. However, small producers of alcoholic beverages in Northern Ireland will not benefit from mutual recognition procedures provided by EU law and the UK will not be able to set duty rates for small producers below EU minima rates. The respect for EU minima rates will protect the level playing field with the EU. ...

“The Commission and the UK Government have agreed to establish an ‘Enhanced Coordination Mechanism’, where Protocol-related VAT and excise issues can be discussed. This mechanism will in particular review new EU acts in the areas of VAT and excise and their application in Northern Ireland, taking into account Northern Ireland’s integral place in the UK Internal Market, while safeguarding the integrity of the EU Single Market.”<sup>156</sup>

The Withdrawal Agreement Joint Committee adopted the proposals on 24 March, at which point they came into force. The Enhanced Coordination Mechanism on VAT and excise met for the first time on 15 June.

### *Evidence received*

135. George Peretz KC, Monckton Chambers, noted that the original Protocol effectively applied EU VAT law, including the Principal VAT Directive (PVD), to all supplies of goods in Northern Ireland. Notwithstanding recent reforms to the PVD providing for greater flexibility in any case, the new ‘note’ to Annex 3 to the Windsor Framework achieves four key things:
- The UK will have complete freedom to set reduced or zero rates for goods “supplied and installed in immovable property located in Northern Ireland by taxable persons”;

<sup>156</sup> [\*Questions and Answers: political agreement in principle on the Windsor Framework, a new way forward for the Protocol on Ireland / Northern Ireland\*](#) [accessed 11 July 2023]

- The UK will not be limited in the number of points in the list of goods in Annex III to the PVD (goods and services eligible for reduced or zero rates) to which it can apply reduced or zero rates;
  - The UK will not be required to apply, in Northern Ireland, the special scheme for distance sales of goods imported from third countries to distance sales of goods from Great Britain to Northern Ireland, provided that the goods are subject to final consumption in Northern Ireland and that VAT has been charged in the UK;
  - The UK will not be required to apply the special scheme on small enterprises, and may apply any exemption scheme to businesses with a turnover below the thresholds of turnover set in the PVD.
136. Mr Peretz also noted that the UK may now apply in Northern Ireland the new excise duty structure laid down for Great Britain, or any replacement structure, as long as the duty is based on alcoholic strength, respects the minimum rates set out in the relevant EU Directive, and does not discriminate against EU products.<sup>157</sup>
137. The Northern Ireland Business Brexit Working Group broadly welcomed the changes, in particular the ability of the UK Government to set VAT rates in Northern Ireland at levels not permitted by the EU VAT Directive. However, they too noted that reforms to the EU VAT Directive do in any case now permit greater flexibility. They stressed that, while the new Enhanced Coordination Mechanism on VAT and excise had the potential to be a very important mechanism, it needed to have the appropriate procedures and expertise to function effectively. They noted that the VAT treatment of second-hand vehicles in Northern Ireland appeared to have been resolved through the introduction of the VAT Related Payments Order on 1 May 2023.<sup>158</sup>
138. The Society of Motor Manufacturers and Traders also noted that Northern Ireland's second-hand car market had been secured into the future with a new scheme taking effect from 1 May 2023.<sup>159</sup> The Royal Yachting Association called for guidance on when VAT would be payable to ensure that recreational boats connected to Northern Ireland can be bought and sold without restrictions.<sup>160</sup>
139. Jess Sargeant said that, under the original Protocol, the Joint Committee was empowered to adopt measures in relation to VAT where the application of the EU regime could have implications for the UK internal market. However, this flexibility was not used. She argued that the Windsor Framework was therefore not strictly necessary to secure exemptions.<sup>161</sup>
140. Dr Esmond Birnie observed that the UK was now able to extend a VAT reduction relating to spending on energy saving investment to Northern Ireland, although the concession only applied to spending on items of a fixed nature that were unlikely to be traded across the Irish border. Hence, in broad terms, EU VAT rules would still apply. Likewise, the ability to apply UK alcohol excise duty changes to Northern Ireland pertained only to drink

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157 Written evidence from George Peretz KC ([IWF0013](#))

158 Written evidence from Northern Ireland Business Brexit Working Group ([IWF0041](#))

159 Written evidence from the Society of Motor Manufacturers and Traders ([IWF0030](#))

160 Written evidence from Royal Yachting Association ([IWF0008](#))

161 [Q 6](#)

for immediate consumption (for instance in bars and restaurants), rather than to supermarkets and off-licences. Furthermore, Northern Ireland would remain the only part of the UK not to have duty-free on flights to/from EU countries.<sup>162</sup>

141. Martin Howe KC said that the Windsor Framework provisions were welcome as far as they went, but they did not “restore the ability in future to set our tax rates across the whole of the UK in line with our wishes, without being subject to European Union interference and negotiation.”<sup>163</sup>
142. Dr Anna Jerzewska warned that uncertainty about “too many different rules and too much variation” in VAT and excise provisions could itself create a barrier to trade. There was therefore a need for VAT and excise provisions applying to Northern Ireland to be “clearly outlined ... in a way that businesses can access and understand”.<sup>164</sup>

### *Conclusions*

143. **Business representatives and experts have welcomed the Windsor Framework’s provisions on VAT as a pragmatic easement of the original provisions of the Protocol, in particular in relation to the application of UK VAT reliefs for energy-saving materials to goods that are supplied and installed in immovable property in Northern Ireland, and the VAT treatment of second-hand vehicles in Northern Ireland. Nevertheless, potential flexibilities already existed under the original Protocol and following changes to the EU Principal VAT Directive. Furthermore, EU VAT rules for goods continue to apply in Northern Ireland as a default.**
144. **Business representatives have welcomed the ability to apply in Northern Ireland the new excise duty on alcohol in Great Britain, although this only applies to bars and restaurants. We also note that Northern Ireland will remain the only part of the UK not to offer duty-free on flights to and from the EU.**
145. **Stakeholders have welcomed the new Enhanced Coordination Mechanism on VAT and excise as an important vehicle for reviewing future UK and EU legislation to ensure that any adverse consequences for Northern Ireland (including regulatory divergence) are taken into account before implementation. Businesses have also welcomed the potential for further flexibilities to be agreed through this dialogue, subject to the agreement of the EU. *We urge the UK and EU to ensure that the new body is sufficiently resourced and has access to necessary expertise (including from Northern Ireland) to ensure it delivers its objectives. We also invite the Government to provide an update on its dialogue with the EU on the development of a list of goods not subject to EU law.***

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162 Written evidence from Dr Esmond Birnie ([IWF0037](#))

163 [Q 53](#)

164 *Ibid.*

## State aid

### *The UK and EU positions*

146. We set out below the UK and EU’s descriptions of the Windsor Framework’s provisions on State aid, as described in the Foreign Secretary’s evidence to the Committee, and the Commission’s ‘Questions and Answers’ document on the Windsor Framework.

### **Box 11: The UK and EU positions**

#### **The Government’s position**

“Under the Protocol, and now the Framework, EU State aid rules are to apply in cases where any aid could ‘affect trade’ in goods and electricity between Northern Ireland and the EU. There was a risk that a broad interpretation of this provision could have been adopted, under which it could ‘reach back’ to aid in Great Britain.

“The Joint Declaration clarifies the scope and interpretation of the application of Article 10(1) to address that risk. It underscores Northern Ireland’s integral place in the UK market, alongside its unique access to the EU market. It does this by setting out a stringent materiality test as to the real, foreseeable effects of aid on relevant trade between Northern Ireland and the EU.

“In the Government’s view this rules out all but the largest subsidies, and those where firms have no material presence in the Northern Ireland market, keeping the overwhelming majority of subsidies under the UK’s own subsidy control regime. This will confine the parties’ understanding of the application of Article 10 of the Framework to cases where there is a genuine, material effect on trade between Northern Ireland and the EU—recognising that those provisions should apply only where necessary to avoid trade distortions. Even in those cases, there will remain a range of exemptions to allow aid to be granted in Northern Ireland without any need for notification or approval.<sup>165</sup>

#### **The Commission’s position**

“To further clarify the provisions on State aid in the Protocol, the Commission and the UK Government have agreed a Joint Declaration setting out a joint understanding of the circumstances in which subsidies granted by UK authorities can affect trade between Northern Ireland and the EU, and which are therefore subject to the Protocol.

“The Commission and the UK Government agree that EU State aid rules referred to in Article 10(1) are only applicable to subsidies that have a genuine and direct link to Northern Ireland. For this genuine and direct link to exist, the subsidy in question needs to have real foreseeable effects on trade between Northern Ireland and the EU. These effects should be material, rather than merely hypothetical or presumed. The mere placement of goods on the Northern Ireland market is therefore not sufficient, on its own, to create a genuine and direct link. ...

<sup>165</sup> Written evidence from HM Government - Rt Hon James Cleverly MP, Secretary of State for Foreign, Commonwealth and Development Affairs ([IWF0042](#)) and supplementary written evidence from HM Government - Rt Hon James Cleverly MP, Secretary of State for Foreign, Commonwealth and Development Affairs ([IWF0043](#))

“Article 10(1) of the Protocol makes EU State aid rules applicable in Northern Ireland. The Joint Declaration neither modifies the substance of Article 10(1) nor restricts its application. Article 10(1) was and remains intended to apply only to subsidies that have an effect on trade between Northern Ireland and the EU, to reflect Northern Ireland’s unique access to the EU Single Market.

“This Joint Declaration details and clarifies a common understanding of the circumstances in which such an effect on trade exists, to provide more clarity to stakeholders. It therefore does not carve out any subsidies that previously fell within the scope of Article 10(1).”<sup>166</sup>

*Evidence received*

147. George Peretz KC asserted that “the UK Government has ... not achieved its negotiating objective of removing Article 10: an objective it was able to support with the point that the UK now has its own subsidy control regime in the Subsidy Control Act 2022.” However, he noted that the Joint Declaration did achieve something in terms of ‘soft law’ in relation to reach-back to ‘Great Britain’ cases, such as where a subsidy given by an English local authority to a factory in its area could be caught by Article 10 if goods from the factory were sold in Northern Ireland. From now on, “the mere fact that a subsidy is given to a business based in Great Britain that has sales in Northern Ireland will not in itself be sufficient to establish the requisite effect”. Rather, “it must be further demonstrated that the economic benefit of the subsidy would be wholly or partially passed on to an undertaking in Northern Ireland, or through the relevant goods placed on the market in Northern Ireland.”
148. Mr Peretz noted that, although the UK and the EU agreed that the Joint Declaration could be used to interpret Article 10, “it does not follow as a matter of logic or constitutional principle that the Court of Justice of the EU will agree with that.” He added that this dealt only with the reach-back issue:
- “Any UK-wide tax measure providing for a particular goods sector to enjoy a favourable tax rate (perhaps for environmental reasons) or any measure assisting businesses across the UK to deal with a major economic problem such as Covid is likely to engage Article 10 precisely because that measure will extend to Northern Ireland businesses: and that gives rise to the real possibility that the UK Government have to seek Commission clearance before such measures can lawfully be implemented, at least in Northern Ireland.”<sup>167</sup>
149. James Webber agreed that there was no change to the provisions of Article 10, meaning that EU State aid rules applied not only to Northern Ireland but also, unlike other provisions of the Protocol, to the UK as a whole. Together with the UK Subsidy Control Act 2022 (which reflects the UK’s obligations under the TCA), this created “two competing subsidy regimes, one piled on top of the other.” He described this overlap of rules as “a very serious mistake.”
150. James Webber said that, while the Joint Declaration was an improvement on what went before, it created a number of problems. In the example of a battery factory in Great Britain receiving aid, he queried whether selling cars

<sup>166</sup> *Questions and Answers: political agreement in principle on the Windsor Framework, a new way forward for the Protocol on Ireland / Northern Ireland* [accessed 11 July 2023]

<sup>167</sup> Written evidence from George Peretz KC ([IWF0013](#))

in Northern Ireland that come from the battery factory would be a sufficient link to engage Article 10, and whether the Windsor Framework would be infringed if the Commission was not notified: “The problem is that, unless you notify it, you will not know. The limitation period for that answer is 10 years, so you are asking an investor to take the risk that, for a 10-year period, their subsidies are potentially challengeable.” Yet if the Commission was notified, it would be given the decision about what amounted to a sufficient and material connection to Northern Ireland, “and the only court you can appeal to at that point is the [CJEU], which I can confidently predict will give you an expansive interpretation of that.”<sup>168</sup> Martin Howe KC agreed.<sup>169</sup>

151. Anton Spisak was surprised that Article 10 was not amended given that the UK now had a robust domestic subsidy control regime in place. He thought that the ambiguities the provision created would ultimately be settled in the courts.<sup>170</sup>
152. The Dairy Council for Northern Ireland noted that the carve-out for agriculture from State aid rules under the original Protocol had provided Northern Ireland with significant policy flexibility in designing a replacement for the Common Agricultural Policy. They stressed the importance of the retention of this flexibility.<sup>171</sup> The Ulster Farmers’ Union likewise underlined that Northern Ireland farmers needed to have a level playing field with farmers in Ireland if they were operating under the same State aid scheme.<sup>172</sup>

#### *Publication of UK and EU guidance*

153. On 9 June, the UK Government published detailed guidance for public authorities on the scope and application of Article 10 of the Windsor Framework.<sup>173</sup> In parallel with this, the Commission published an updated *Notice to stakeholders on the withdrawal of the United Kingdom and EU rules in the field of State aid*, reflecting the Joint Declaration agreed as part of the Windsor Framework.<sup>174</sup>

#### *Conclusions*

154. **While the Government has not achieved its negotiating aim of removal of Article 10 of the Windsor Framework in its entirety, it has secured the EU’s agreement to an Interpretative Declaration seeking to limit the scope of the ‘reach-back’ of Article 10 into State aid provisions affecting the whole of the UK. The UK and the EU have since endorsed the Declaration in published guidance. However, it is uncertain what impact the Declaration will have on the Court of Justice of the European Union’s interpretation of Article 10, and legal experts have stressed that the issue may ultimately be tested in the courts.**

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168 [Q 6](#)

169 [Q 53](#)

170 [Q 6](#)

171 Written evidence from Dairy Council for Northern Ireland ([IWF0020](#))

172 Written evidence from Ulster Farmers’ Union ([IWF0024](#)) and [Q 34](#)

173 Department for Business and Trade, Department for Business, Energy and Industrial Strategy, *Guidance on the scope and application of Article 10 of the Windsor Framework* (Updated 9 June 2023): <https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities/guidance-on-the-scope-and-application-of-article-10-of-the-windsor-framework> [accessed 11 July 2023]

174 Communication from the Commission - Notice to stakeholders on the withdrawal of the United Kingdom and EU rules in the field of state aid, [OJ C 202/25](#) (9 June 2023)

155. **The Joint Interpretative Declaration on State aid does not deal with UK-wide measures that have a “material” or “real foreseeable” effect on trade between Northern Ireland and the EU. Experts have warned of the legal uncertainty and chilling effect on investment that may arise from the requirement to notify the Commission of such measures, in particular given that a subsidy can be challenged by the Commission for a number of years after it is notified. It therefore remains to be seen how robust the UK Government and Commission’s interpretation of the Windsor Framework’s provisions on State aid will prove to be in practice. *In the meantime we invite the Government to respond to the concerns that our witnesses have raised.***

## CHAPTER 6: THE UK INTERNAL MARKET, THE EU SINGLE MARKET FOR GOODS, REGULATORY DIVERGENCE AND THE APPLICATION OF EU LAW

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### Northern Ireland's place in the UK internal market and access to the EU Single Market for goods

#### *Overview*

156. We set out below the UK and EU's positions on the impact of the Windsor Framework on Northern Ireland's place within the UK internal market and access to the EU Single Market for goods, as described in the Foreign Secretary's evidence to the Committee and the Commission's 'Questions and Answers' document on the Windsor Framework.

#### **Box 12: The UK and EU positions**

##### **The Government's position**

"We consider that the Windsor Framework protects Northern Ireland's place in our Union and its internal market ... and maintains the full access to the EU market for businesses in Northern Ireland that so many underlined as important. ...

"It ensures the smooth flow of trade within the UK internal market through the new green lane we have secured. It also guarantees unfettered access for firms in NI to the whole of the UK internal market.

"At the same time, it fully preserves access for Northern Ireland businesses to the EU market, ensuring a unique set of opportunities for businesses and citizens in Northern Ireland. We are confident that the Framework provides a new basis for future stability and prosperity in Northern Ireland.

"The UK Government and the European Commission have agreed that there should be some enhanced market surveillance on North-South trade. ... There will also be further requirements on Ireland and EU Member States to ensure that sensitive products, such as food, are not moved illegally from Ireland into Northern Ireland. ... Our approach will be to manage this sensitively with sensible practical arrangements, focused on maintaining market access for Northern Ireland while protecting the UK and EU internal markets. This will not involve new checks or controls at the international border between Northern Ireland and Ireland, but will use data-sharing and risk analysis to target those who may seek to abuse these arrangements which guarantee the smooth flow of goods within the UK internal market. ...

"The Government also recognises the separate responsibility to strengthen our own protections for the UK internal market to avoid new regulatory barriers. ... This will include using the full remit of the Office for the Internal Market, as well as guidance on the pre-existing duties under s46 of the UK Internal Market Act 2020."<sup>175</sup>

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175 Written evidence from HM Government - Rt Hon James Cleverly MP, Secretary of State for Foreign, Commonwealth and Development Affairs ([IWF0042](#))



### The Commission's position

“The Windsor Framework ... constitutes a comprehensive set of joint solutions to address, in a definitive manner, the real-life concerns of all communities in Northern Ireland, while protecting the integrity of the EU Single Market.

The solutions have been found within the framework of the Withdrawal Agreement, of which the Protocol is an integral part.

These practical and sustainable solutions mark a new way forward on the Protocol and ensure legal clarity and predictability for people and businesses in Northern Ireland. The solutions strike the right balance between flexibilities and effective safeguards for the protection of the EU Single Market. ...

The new arrangements mean that moving goods from Great Britain to Northern Ireland will now be vastly simplified, benefitting citizens and businesses in Northern Ireland alike. At the same time, they will continue to benefit from their unique access to the EU Single Market for goods. ...

The Commission and the UK Government have agreed to work more closely together on market surveillance, in particular in relation to the newly agreed solutions. Both recognise the importance of businesses being aware of the rules applying in Northern Ireland for goods.

The UK has further set out its commitment to continue building capabilities and capacity amongst its market surveillance and other competent authorities responsible for overseeing compliance with applicable requirements. Notably, the UK will ensure that relevant authorities have the necessary powers to undertake effective monitoring activity in the context of the international border between the UK and the EU. The UK will further ensure robust enforcement so that businesses do not take advantage of these solutions. It is important to underline, however, that these enforcement actions will not involve new checks or controls at the border between Northern Ireland and Ireland. They will only mean enhanced activity by relevant UK authorities, in accordance with international best practice and together with the EU and Member States authorities, where appropriate.”<sup>176</sup>

157. Table 2 sets out Northern Ireland's purchases and sales of goods for 2021 (the latest date for which figures are available). It shows that Northern Ireland's purchases and sales of goods from/to Great Britain are considerably greater than from/to Ireland and the rest of the EU combined.

<sup>176</sup> *Questions and Answers: political agreement in principle on the Windsor Framework, a new way forward for the Protocol on Ireland / Northern Ireland* [accessed 11 July 2023]

**Table 2: Northern Ireland sales and purchases of goods, 2021 (Source: Northern Ireland Statistics and Research Agency)**

	<b>Total</b>	<b>Great Britain</b>	<b>Ireland</b>	<b>Rest of the EU</b>	<b>Rest of the world</b>
Purchases by Northern Ireland	£19.1 billion	£12.3 billion	£2.8 billion	£2.2 billion	£1.8 billion
Sales from Northern Ireland	£17.0 billion	£7.8 billion	£3.9 billion	£2.1 billion	£3.3 billion

Source: Northern Ireland Statistics and Research Agency (NISRA), Northern Ireland Economic Trade Statistics 2021 (14 December 2022): <https://datavis.nisra.gov.uk/economy-and-labour-market/northern-ireland-economic-trade-statistics-2021.html> [accessed 11 July 2023]

*Evidence received*

158. In that context, several witnesses stressed the primary importance of Northern Ireland’s access to the UK internal market. Peter Summerton noted:

“The Northern Ireland supply chain from Great Britain is part of the local supply chain/regional supply chain. Outwith Great Britain, we are simply a region, and goods that move across the Irish Sea are regional goods. Therefore ... a high percentage of the trade between GB and NI is in those smaller quantities. ... It is critical that Northern Irish goods are protected in the way they move to GB. ... It is 70 million people supporting 1.8 million people on a supply chain. ... It is the most cost-effective supply chain, and we are putting barriers on that supply chain, which is really challenging.”<sup>177</sup>

159. Mark Tait said that “many of our small businesses rely on the GB supply market and have found that proportionally difficult” under the Protocol. Stuart Anderson agreed that SMEs in particular are heavily reliant on the movement of goods between Great Britain and Northern Ireland.<sup>178</sup>

160. As we have seen, Sarah Hards emphasised that “our having unfettered access to GB is the way it should be ... We have maybe five double-deck trailers coming over from GB every night. There are 90 pallets on each trailer. That could be 90 different consignments from 90 different companies across GB.”<sup>179</sup>

161. While trade with the rest of the UK is economically more significant for the Northern Ireland economy as a whole, cross-border trade on the island of Ireland is nevertheless important for certain sectors of the Northern Ireland economy. Ibec, Ireland’s largest lobby and business representative group, stressed that the Protocol (and the Windsor Framework) had enabled “all island businesses” in the dairy, alcohol, retail, construction and medical technology sectors to continue to operate complex supply chains and trade across the two jurisdictions.<sup>180</sup>

162. David Brown stated that, of Northern Ireland’s food production, 15% went to Ireland and 8–9% to the rest of the EU. One-third of milk from

177 [QQ 37–39](#)

178 [Q 27](#)

179 [QQ 38–39](#)

180 Written evidence from Ibec ([IWF0036](#))

Northern Ireland was processed in Ireland. While “most of our trade is and has been, and I suspect will be, with GB”, retaining unique access to the EU marketplace was essential for the agri-food sector in Northern Ireland.<sup>181</sup>

163. The Dairy Council for Northern Ireland likewise highlighted how, over the past 25 years, an island of Ireland dairy value chain had developed.<sup>182</sup> On the other hand, Lord Bew argued that, outside agri-food and electricity, there had not been substantial growth in the island economy in the 25 years since the Belfast/Good Friday Agreement.<sup>183</sup>
164. Declan Gormley said that, for the manufacturing sector in particular, “the idea that we will be able to access both the EU and the UK so we have free access to a market of half a billion is a unique opportunity that, if properly implemented, will be immensely beneficial to Northern Ireland plc.”<sup>184</sup> Glyn Roberts was hopeful that dual market access would give Northern Ireland a unique selling point for foreign direct investment. However, “political instability is the worst thing for business. It is the worst thing for the economy.”<sup>185</sup>
165. Roger Pollen said that the Windsor Framework “could be the best of both or the worst of all” worlds. He warned that the uniqueness of Northern Ireland’s access to the EU Single Market may not be understood by EU businesses and consumers. There was a need for someone “within the EU championing the fact that Northern Ireland is an integral part of the EU Single Market and the UK internal market”. At the same time, there was a risk that Northern Ireland would be marginalised from the rest of the UK internal market. He stressed the importance of the UK Office for the Internal Market monitoring this.<sup>186</sup>
166. As we have seen, witnesses warned that the ability of retailers based in Great Britain to use the green lane could place Northern Ireland businesses at a competitive disadvantage. Martin Howe KC said that this gave rise to “a risk of economic distortion and unfairness, particularly to Northern Ireland businesses.”<sup>187</sup>
167. Anton Spisak gave the example of future changes to gene editing standards in Great Britain but not in Northern Ireland or the EU. He stressed that the new domestic internal market surveillance regime, including the Office for the Internal Market, should have a key role in monitoring this.<sup>188</sup>
168. Peter Summerton and Ibec both expressed concern at the dual impact of implementation of both the Windsor Framework and the Border Target Operating Model from October 2023 on North-South and East-West movement of goods.<sup>189</sup> Peter Summerton also noted that the Border Target Operating Model documentation set out proposals for a border control post at Cairnryan, a major port on the west coast of Scotland for the movement of goods to and from Northern Ireland:

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181 [Q 27](#)

182 Written evidence from Dairy Council for Northern Ireland ([IWF0020](#))

183 [Q 11](#)

184 [Q 62](#)

185 *Ibid.*

186 [Q 38](#)

187 [Q 54](#)

188 [Q 7](#)

189 [Q 38](#) and written evidence from Ibec ([IWF0036](#))

“As the Windsor Framework promises unfettered access to the GB markets, how will that be controlled for Northern Ireland access to GB markets whenever there is a free flow of EU goods through Northern Ireland? ... While the UK seeks for export purposes and for food controls to put a fence around GB, that fence is wide open between NI and GB; it is also wide open between the greater EU and NI.”

He warned that there would be an incentive for Irish producers to move goods via Northern Ireland into Great Britain, rather than via Dublin and Holyhead, to avoid checks.<sup>190</sup>

169. Martin Howe KC agreed: “How do you tell whether goods originate in Northern Ireland? How do you tell in practice? What formalities do you use to strain out non-originating goods?”<sup>191</sup> Dr Anna Jerzewska said that there was “anecdotal evidence of EU companies setting up or registering in NI for the purpose of moving goods to GB to avoid formalities and tariffs ... especially for smaller volumes such as [business-to-consumer] and e-commerce.”<sup>192</sup>
170. However, Sarah Hards did not think it likely that firms would move goods from the EU to Great Britain via Northern Ireland to avoid checks, since the Government would use intelligence-led information to monitor whether such movements were occurring.<sup>193</sup> Roger Pollen agreed: “The Northern Ireland Protocol and the Windsor Framework are for the benefit of the law-abiding. If somebody is determined to break law, they will try to do that, and they will reap whatever punishment comes their way.”<sup>194</sup>

### *Conclusions*

171. **Given the primary economic importance of purchases from and sales of goods to Great Britain for Northern Ireland’s economy, we stress the imperative of ensuring that Northern Ireland is an integral part of the UK internal market. At the same time, we acknowledge the importance of access to the EU Single Market for goods for many sectors of the Northern Ireland economy, in particular the agri-food and manufacturing industries, which have complex supply chains across the island of Ireland.**
172. **The Government has committed to providing Northern Ireland with a “unique set of opportunities” in terms of access to both markets. This is a laudable aim, and time will tell if the Windsor Framework delivers this in practice. *In the meantime, the Government should explain what this means in practice, and how it will be delivered. Furthermore, in order to maximise these opportunities, the Government and the EU must redouble their efforts to educate businesses and stakeholders in Great Britain and in the EU about the unique benefits of Northern Ireland’s dual market access, and ways of addressing impediments to moving goods from Great Britain to Northern Ireland. The new Office for the Internal Market also has a key role to play in monitoring the impact of the Windsor Framework on Northern Ireland’s place within the UK internal market.***

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190 [QQ 36, 38, 44–45](#)

191 [Q 51](#)

192 *Ibid.*

193 [Q 43](#)

194 *Ibid.*

173. **We again note concerns that the Windsor Framework could undercut the competitiveness of Northern Ireland businesses, which are required to ensure compliance with EU rules for goods, compared to competitors in Great Britain able to access the Northern Ireland market via the green lane. We invite the Government urgently to clarify what steps it is taking to address this issue.**
174. *We invite the Government to clarify how, in the context of goods moving from Northern Ireland to Great Britain, it will distinguish between Northern Ireland goods entitled to unfettered access to the UK internal market and those moving from the EU (including Ireland) to Great Britain via Northern Ireland under the Border Target Operating Model.*

### Regulatory divergence

#### *The UK and EU positions*

175. We set out below the UK and EU’s descriptions of the Windsor Framework’s provisions on managing regulatory divergence, as described in the Foreign Secretary’s evidence to the Committee, and the Commission’s ‘Questions and Answers’ document on the Windsor Framework.

### Box 13: The UK and EU positions

#### **The Government’s position**

“The Windsor Framework does create a different legal and practical context on the island of Ireland, with substantial and likely increasing divergence between Northern Ireland and Ireland over time—building, of course, on the in-built capacity for divergence in the vast majority of areas outside the Windsor Framework including environmental law, professional qualifications, employment law, procurement, immigration, banking, data, and a wide range of services and other rules. ...

“We have also established with the EU the Special Goods Body, which enables us to engage early where any rule changes could inadvertently lead to new regulatory barriers, to find appropriate solutions through the Joint Committee. ... As these new functions are established, we will [further] be ... able to assess their work.

“There is not presently a single, central database kept of where UK and EU rules may differ, and we do not consider that one is necessary to support work across Government. ... There is already a significant amount of work done in Government to monitor legislative developments and their implications, and that will be an ongoing priority as we take forward the new arrangements in the Windsor Framework. This is not least because the new structures, such as the Special Goods Body, will enable dialogue between the UK and EU to manage issues should they arise. That work will include developing further guidance for appropriate authorities on pre-existing duties under s46 of the UK Internal Market Act 2020 on the need to have special regard to maintain Northern Ireland’s integral place in the UK internal market, and also to facilitate the flow of trade between Great Britain and Northern Ireland.

“As to the [Office for the Internal Market], the monitoring, assessing, and reporting of regulatory divergence within the UK Internal Market is within its remit as provided by Part 4 of the UK Internal Market Act 2020. We will work with the OIM on how to facilitate that work as the new arrangements come into effect.”<sup>195</sup>

### The Commission’s position

“The Specialised Committee on the Protocol may convene in a specific composition, namely the Special Body on Goods, which may provide for exchanges of views on any future UK legislation regarding goods of relevance to the operation of the Protocol, including assessing any potential divergence between EU and UK rules. Where appropriate and when ensuring the effective implementation of the Protocol, the Specialised Committee can adopt recommendations for measures to be taken by the Joint Committee of the Withdrawal Agreement.”<sup>196</sup>

### *Evidence received*

176. Jess Sargeant stated that the Windsor Framework allowed more divergence between Great Britain and Northern Ireland to be tolerated “without it immediately meaning that it is much more difficult to sell goods to Northern Ireland.”<sup>197</sup> On the other hand, James Webber argued that the Windsor Framework would create a “natural drag-along effect” in terms of UK alignment with EU rules to avoid issues of regulatory divergence arising.<sup>198</sup> Dr Esmond Birnie stated that UK agreement to the Windsor Framework “may indicate a direction of travel, whereby there will be greater alignment with the EU in terms of regulation, especially in terms of food and agriculture.”<sup>199</sup>
177. The Northern Ireland Business Brexit Working Group stressed that appropriate and robust mechanisms needed to be put in place to manage the impact on Northern Ireland of regulatory divergence over time.<sup>200</sup> Stuart Anderson said that for business, “regulatory divergence is probably the number one issue that comes up regardless of industry and sector”. He noted that the Special Body on Goods and the UK Office for the Internal Market have a crucial role in monitoring regulatory divergence between the UK and EU, and Great Britain and Northern Ireland respectively. However, clarity was needed on how this would be done.<sup>201</sup>
178. The Dairy Council for Northern Ireland stated that SPS divergence was a significant threat. They called on the UK and the EU to carry out an impact assessment for Northern Ireland before implementing any new legislation that could lead to divergence.<sup>202</sup> Lakeland Dairies Co-operative Society Limited made similar arguments, noting that, in the event of divergence, the dairy sector would need to meet the higher standards of the two markets,

195 Written evidence from HM Government - Rt Hon James Cleverly MP, Secretary of State for Foreign, Commonwealth and Development Affairs ([IWF0042](#)) and supplementary written evidence from HM Government - Rt Hon James Cleverly MP, Secretary of State for Foreign, Commonwealth and Development Affairs ([IWF0043](#))

196 *Questions and Answers: political agreement in principle on the Windsor Framework, a new way forward for the Protocol on Ireland / Northern Ireland*

197 [Q 7](#)

198 *Ibid.*

199 Written evidence from Dr Esmond Birnie ([IWF0037](#))

200 Written evidence from Northern Ireland Business Brexit Working Group ([IWF0041](#))

201 [Q 33](#)

202 Written evidence from Dairy Council for Northern Ireland ([IWF0020](#))

risking the competitiveness of Northern Ireland firms.<sup>203</sup> Declan Gormley said that manufacturers who export would likewise seek to remain compliant with the highest standards.<sup>204</sup>

179. The Ulster Farmers' Union warned that, as Great Britain moved in one direction and the EU in another, "the great risk is that NI is left in 'no man's land', looking to supply both markets but being undercut by competing with producers producing to higher or lower standards compared to NI." They stressed that the UK, EU and Northern Ireland Executive "should be monitoring divergence and highlighting potential issues well in advance of [them] becoming a reality. Processes for monitoring divergence up until this point have not been anywhere near adequate." They also called on the UK and the EU to agree an SPS/veterinary agreement to eliminate many of these challenges.<sup>205</sup>
180. Dr Viviane Gravey, Dr Billy Melo Araujo and Dr Lisa Claire Whitten noted that, in regulatory terms, areas of established North-South cooperation "are much less secure post-Brexit than they were pre-Brexit", and that this could be exacerbated by the Windsor Framework. They called for a record of divergence to be kept, to take stock of evolving barriers to trade within the UK and/or across the island of Ireland.<sup>206</sup>
181. Professor David Phinnemore, Professor of European Politics, Professor Katy Hayward, Professor of Political Sociology, and Dr Lisa Claire Whitten, Research Fellow, Post Brexit Governance NI, Queen's University Belfast noted that a key shortcoming of the pre-Windsor Framework UK-EU relationship was the absence of any formalised mechanism for identifying regulatory divergence that could affect Northern Ireland. They too noted the potential of the new Special Body on Goods to rectify this, subject to the UK and EU making effective use of it. They called for Government and Northern Ireland Executive departments, and the Office for the Internal Market, to be placed under an obligation to consider or report on the divergence implications of any planned legislation.<sup>207</sup>
182. The Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland called on the UK Government and the Northern Ireland Executive to monitor the impact on equality and human rights in Northern Ireland of any divergence on the island of Ireland.<sup>208</sup>

### *Conclusions*

183. **Business representatives stress that regulatory divergence, whether between Great Britain and Northern Ireland, or between Northern Ireland and Ireland, remains their number one concern. There is an underlying fear that Northern Ireland will find itself in a "no-man's land" between Great Britain and the EU (including Ireland), placing the competitiveness of Northern Ireland firms and their complex**

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203 Written evidence from Lakeland Dairies Co-operative Society Limited ([IWF0035](#))

204 [Q 69](#)

205 Written evidence from Ulster Farmers' Union ([IWF0024](#))

206 Written evidence from Dr Viviane Gravey, Dr Billy Melo Araujo and Dr Lisa Claire Whitten ([IWF0022](#))

207 Written evidence from Professor David Phinnemore, Professor Katy Hayward and Dr Lisa Claire Whitten ([IWF0023](#))

208 Joint written evidence from the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland ([IWF0025](#))

**supply chains in jeopardy. We invite the Government to clarify whether it is seeking actively to diverge from the EU, and if so, what assessment it has made of the practical impact of this on Northern Ireland, and on the issues raised in this report.**

184. **While we welcome the mechanisms that have been established to monitor such divergence, including (within the UK) the Office for the Internal Market and (between the UK and the EU) the Special Body on Goods, it remains to be seen how effective these bodies will be in practice. In order to aid their work, we urge the Government and the EU to undertake substantive assessments for all planned legislation of the impact of regulatory divergence on Northern Ireland. We also renew our call, made repeatedly since March 2022 with the support of Northern Ireland stakeholders, for the Government to create and maintain an up-to-date record of regulatory divergence and its impact on Northern Ireland.**

### **The application of EU law in Northern Ireland**

#### *The Government's position*

185. We set out below the Government's position on the application of EU law to Northern Ireland under the Windsor Framework, as described in its Command Paper, the Prime Minister's statement to the House of Commons, and the Foreign Secretary's evidence to the Committee.

#### **Box 14: The Government's position**

The Government Command Paper stated that the Windsor Framework “removed 1,700 pages of EU law, and takes with it any [CJEU] interpretation and oversight in those areas.”<sup>209</sup> In his 27 February statement to the House of Commons, the Prime Minister reiterated that “today's agreement scraps 1,700 pages of EU law.”<sup>210</sup>

The Foreign Secretary stated: “With the disapplication of 1,700 pages of EU rules from Northern Ireland, we have safeguarded its place within the UK internal market. It is now for the UK to decide, and for UK courts to interpret, the rules in those areas where EU law no longer applies.

“The rules that do apply—less than 3% of overall EU rules by the EU's own calculations—are there solely, and only as strictly necessary, in order to maintain the unique ability for Northern Ireland firms to sell their goods into the EU market. Critically, those rules apply only for as long as those arrangements command democratic consent in Northern Ireland. ...

“Importantly, the Framework codifies a unique arrangement whereby UK rules on public health, marketing, organics, labelling, genetic modification, and drinks such as wines, spirits and mineral waters will also apply to goods sold from Great Britain to Northern Ireland. Overall, the new arrangements will remove more than 60 EU food and drink rules in the original Protocol covering well over 1,000 pages of law for trade within the green lane. This will lock in a durable system, providing resilience against future EU rule changes in those areas.”<sup>211</sup>

209 *The Windsor Framework: A new way forward*, p 21 [accessed 12 July 2023]

210 HC Deb, 27 February 2023, [col 574](#).

211 Written evidence from HM Government - Rt Hon James Cleverly MP, Secretary of State for Foreign, Commonwealth and Development Affairs ([IWF0042](#))



*Evidence received*

186. When we asked the Foreign Secretary to list the 1,700 pages of EU law that had been disapplied, he replied:

“We can give a pretty comprehensive list that gives a strong indication of areas, but there are a number of areas, particularly when it comes to the functioning of the red and green lanes, that would be conditional on certain circumstances, and they are not that easy to put into a list.”<sup>212</sup>

187. The Foreign Secretary also cited a letter from the Secretary of State for Northern Ireland, Rt Hon Chris Heaton-Harris MP, to the Chair of the House of Commons European Scrutiny Committee, Sir William Cash MP, which set out the basis for the Government’s claims. This letter referred to disapplications in relation to the movement of goods, agri-food, including SPS rules, plant and pet movements, VAT and excise and medicines. The letter suggested that the main statistical basis for the Government’s reference to 1,700 pages of EU law was the list of EU acts in Annex 1<sup>213</sup> of the EU Regulation on rules relating to movements of retail goods moving through the green lane published as part of the Windsor Framework package.<sup>214</sup> The Secretary of State for Northern Ireland wrote that this Regulation “disapplies more than 60 core EU regulations—and the implementing and delegated acts that flow from them—covering over 1,000 pages of food safety and consumer protection rules for green lane retail trade.”

188. The Secretary of State for Northern Ireland concluded:

“Providing a single definitive list of all disapplied law is not possible, because the question depends on the specific case at hand. For example, many EU rules are disapplied for goods moving in the ‘green lane’ to support UK internal trade, but continue, rightly, to apply in the ‘red lane’ (as was envisaged even by the Northern Ireland Protocol Bill). ... The removal of EU law requirements has been provided for illustrative purposes to demonstrate the scale of change delivered through the Windsor Framework. Our assessment is that this is likely to be an underestimate and that additional pages of EU law will have been set aside as the Framework is implemented.”<sup>215</sup>

189. Dr Viviane Gravey, Dr Billy Melo Araujo and Dr Lisa Claire Whitten argued that assessing the Government’s claim regarding removal of 1,700 pages of EU law “depends on the definition of ‘removal’ as well as the context or legal person in question.” They said that there had been some narrowing of the application of some laws that still apply in Northern Ireland, and a change

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212 [Q 81](#)

213 European Commission, Annexes to the Proposal for a Regulation of the European Parliament and of the Council on specific rules relating to the entry into Northern Ireland from other parts of the United Kingdom of certain consignments of retail goods, plants for planting, seed potatoes, machinery and certain vehicles operated for agricultural or forestry purposes, as well as non-commercial movements of certain pet animals into Northern Ireland, [COM\(2023\) 124 final](#) (27 February 2023)

214 European Commission, Regulation of the European Parliament and of the Council on specific rules relating to the entry into Northern Ireland from other parts of the United Kingdom of certain consignments of retail goods, plants for planting, seed potatoes, machinery and certain vehicles operated for agricultural or forestry purposes, as well as non-commercial movements of certain pet animals into Northern Ireland, [COM\(2023\) 124 final](#) (27 February 2023)

215 Letter from Rt Hon Chris Heaton-Harris MP, Secretary of State for Northern Ireland, to Sir William Cash MP, Chair, European Scrutiny Committee, 15 May 2023: <https://committees.parliament.uk/publications/40551/documents/197744/default/>

in the scope of application of some other EU laws “in the form of (in effect) conditional derogations to goods moving GB-NI introduced via the ‘green lane’ processes.” They pointed out that references to 1,700 pages of EU law being “removed” primarily concerned goods from Great Britain moving to Northern Ireland “and only in certain circumstances ... regarding operation of green and red lanes”, not to goods produced in Northern Ireland, “where those pages of EU law remain.”<sup>216</sup>

190. Professor David Phinnemore, Professor Katy Hayward and Dr Lisa Claire Whitten noted that the Windsor Framework did reduce in practice the amount of EU law with which businesses in Great Britain needed to comply when supplying goods into Northern Ireland. However, this was contingent on agreed enhanced market surveillance and enforcement mechanisms being implemented, with the green lane arrangements being subject to review and potential suspension or cessation. They noted that, under the EU Regulation on rules relating to movements of retail goods moving through the green lane, 65 EU acts listed in Annex 2 to the Protocol would not apply and two EU acts would only partially apply to those goods movements. Other EU acts listed in Annex 2 would continue to apply.<sup>217</sup>

191. Dr Lisa Claire Whitten said that this “is what the UK Government refer to as disapplication, but ... it is very contingent on one’s definition of disapplication.”<sup>218</sup>

192. Martin Howe KC said that:

“There is disapplication of some EU measures from certain activities within Northern Ireland. There is no general disapplication of any EU laws for Northern Ireland, with the exception of two articles in directives relating to VAT and indirect taxes. ... That was particularly what I had in mind when I talked about misleading presentation by the UK Government. To say that it is localised disapplication within a specific scheme and write the paper as if it is a complete disapplication from Northern Ireland is misleading, in my view, to anyone.”<sup>219</sup>

193. More generally, Martin Howe KC argued that the continued application of EU law in Northern Ireland raised fundamental constitutional issues in terms of sovereignty. He argued that, compared to the Northern Ireland Protocol Bill:

“The Windsor Framework makes worse, rather than better, the fundamental constitutional problem: the presence of a foreign law-making power, Executive and court system on the territory of the United Kingdom, resulting in citizens in one part of the United Kingdom being subject to a system of laws different from that in the rest of the country, without any democratic means of altering or removing those laws. One is fully aware of the different perspectives of the two communities in Northern Ireland, but from the perspective of the unionist community that is a fundamental problem.”<sup>220</sup>

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216 Written evidence from Dr Viviane Gravey, Dr Billy Melo Araujo and Dr Lisa Claire Whitten ([IWF0022](#))

217 Written evidence from Professor David Phinnemore, Professor Katy Hayward and Dr Lisa Claire Whitten ([IWF0023](#))

218 [Q 56](#)

219 [Q 55](#)

220 [Q 47](#)

194. The TUV agreed that, for unionists, “embracing membership of the EU’s single market ... is not a matter of economic advantage but of constitutional detriment.”<sup>221</sup>

195. On the other hand, the Alliance Party of Northern Ireland argued:

“Brexit, particularly a hard Brexit, creates new lines on maps, which create friction and impinge on the sense of identity for some people. There is no perfect solution to these challenges. ... The Windsor Framework is an improvement upon [the Protocol], given the reduced level of paperwork and checks. ... There is an ongoing trade-off between the level of regulatory divergence between Great Britain and the European Union and the scale of the challenges across the Irish Sea ... Northern Ireland’s ongoing compliance with a range of EU laws is essential for our ongoing access to the Single Market for goods.”<sup>222</sup>

### *Conclusions*

196. **The Government’s reference to the “disapplication of 1,700 pages of EU law from Northern Ireland” under the Windsor Framework has caused uncertainty and confusion. While a small number of EU rules have been disapplied in Northern Ireland in their entirety, the main basis for the Government’s statistic appears to be the 65 EU acts listed in Annex 1 of the EU Regulation on rules relating to movements of retail goods moving through the green lane published as part of the Windsor Framework package. While these laws are disapplied for the movement of goods from Great Britain to Northern Ireland via the green lane, they will apply for movement of goods via the red lane, and for all goods produced in Northern Ireland itself. We urge the Government to set out clearly the basis for its reference to the “disapplication of 1,700 pages of EU law from Northern Ireland”.**

197. **More generally, the continued application of EU law in Northern Ireland remains politically contentious. For many in the unionist community in particular, and others, it raises constitutional issues of sovereignty in terms of the application of areas of EU law to Northern Ireland, but not to the rest of the UK. On the other hand, for many in the nationalist community in particular, and others, the continued application to Northern Ireland of areas of EU law is necessary to ensure Northern Ireland’s access to the EU Single Market for goods and the avoidance of a land border on the island of Ireland. We acknowledge the difficulty of reconciling these two positions. In view of these political tensions, the obligation on the UK and the EU is for them both to be fully transparent with Northern Ireland stakeholders over the consequences of what they have agreed under the Windsor Framework.**

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221 Written evidence from TUV ([IWF0038](#))

222 Written evidence from Alliance Party of Northern Ireland ([IWF0019](#))

## CHAPTER 7: THE DEMOCRATIC DEFICIT, THE STORMONT BRAKE AND THE BELFAST/GOOD FRIDAY AGREEMENT

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### The Windsor Framework and the democratic deficit

198. In our introductory report, published in July 2021, we drew attention to:
- “the pervasive sense that the Protocol creates a democratic deficit, in that significant aspects of EU law with wide ranging political and economic implications apply to Northern Ireland subject neither to UK Government participation in the EU institutions, nor to consent from parliamentarians either at Westminster or Stormont.”<sup>223</sup>
199. In its Command Paper accompanying the Windsor Framework, the Government stated:
- “To address the democratic deficit the agreement marks a definitive break from the legal and political framework that underpinned the old Protocol, with treaty change that provides a new underpinning of democratic oversight in line with the principles of the Belfast (Good Friday) Agreement. While the original Protocol ensured that any application of EU rules, and [CJEU] oversight, was subject to ongoing democratic consent, that was insufficient on its own to address concerns about the role of EU courts, as well as how to respect and protect the voice and interests of all communities in Northern Ireland. This agreement rectifies that by changing and rewriting the core dynamic alignment legal text as it stood in the old Protocol—entrenching democratic oversight and ending the prospect of damaging new goods rules being imposed on Northern Ireland.”<sup>224</sup>
200. As well as the provisions outlined earlier in the report, and those on enhanced dialogue and engagement summarised in Chapter 9, the key to the Government’s argument that the democratic deficit has been addressed is the ‘Stormont Brake’.

### The Stormont Brake

#### *The UK and EU positions*

201. We set out below the UK and EU’s descriptions of the Stormont Brake, as described in the Government’s Command Paper, and the Commission’s ‘Questions and Answers’ document on the Windsor Framework.

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223 *Report from the Sub-Committee on the Protocol on Ireland/Northern Ireland: Introductory report*

224 *The Windsor Framework: A new way forward* [accessed 12 July 2023]

### Box 15: The UK and EU positions

#### The Government's position

In its Command Paper, the Government stated: “A new Stormont Brake will apply to new or amended EU goods rules that would have a significant impact on the day-to-day lives of businesses and citizens—a trigger which will operate in line with the normal operation of cross-community safeguards in Northern Ireland, fully in line with the spirit and practice of the Belfast (Good Friday) Agreement. And once pulled, that Brake will give the UK Government the sovereign power to veto the new EU rule from ever applying in Northern Ireland. That veto can only be challenged through independent arbitration mechanisms, not the [CJEU]—removing the ultimate authority of the [CJEU] in areas in which it would affect day-to-day lives. The result is that EU laws will apply only where strictly necessary to provide privileged access to the whole of the EU market under a new legal framework of democratic consent and control. And we will underpin this new framework through amendments to the Northern Ireland Act 1998 to provide constitutional and democratic guarantees for the people of Northern Ireland.”

The Government described the Stormont Brake as “a powerful new democratic safeguard” that “will apply to changes to EU customs, goods, and agriculture rules within the scope of the original Protocol”.<sup>225</sup> Whereas previously these changes to EU rules were applied automatically under Article 13(3), the Government stated that the Stormont Brake will give the Northern Ireland Assembly “once restored, a genuine and powerful role in the decision on whether or not significant new goods rules impacting on everyday life in Northern Ireland should apply. ... When the institutions are restored, the trigger for the Brake will operate on the same basis as a separate ‘Petition of Concern’ within the Belfast (Good Friday) Agreement, as updated by the New Decade, New Approach Agreement in 2020, allowing a concern to be raised based on 30 MLAs from two or more parties coming together to sign a petition. ...

“Once the UK notifies the EU that the Brake has been triggered, the rule in question is suspended automatically from coming into effect. It can then only [subsequently] be ... applied in Northern Ireland if the UK and EU both agree to that jointly in the Joint Committee. This would give the UK an unequivocal veto—enabling the rule to be permanently disapplied—within the Joint Committee.”

The Government argued that the Stormont Brake “provides a permanent, cross-community based safeguard in the treaty to address the democratic deficit”, one which “goes beyond the arrangements set out in the Northern Ireland Protocol Bill, which applied permanent dynamic EU law alignment to all ‘red lane’ trade at risk of entering the EU.” The Government also stated that the “new safeguard in the treaty is not subject to [CJEU] oversight, and any dispute on this issue would be resolved through subsequent independent arbitration according to international, not EU, law.”

<sup>225</sup> In a footnote, the Government added that “the only exception to this is a very small number of instruments, such as EU-third country agreements or anti-fraud cooperation where the concept of a veto is technically unworkable or otherwise not applicable”.

However, the Government stipulated that the Brake “will not be available for trivial reasons: there must be something ‘significantly’ different about a new rule, whether in its content or scope, and MLAs will need to show that the rule has a ‘significant impact specific to everyday life’ that is liable to persist.” On the other hand, the mechanism is “available to MLAs to apply to specific elements of new goods rules changes or to the entirety of a new law” so that “if only a limited part of an EU Directive or Regulation is changed, the Brake can still be used if the new content of the rules are significant and the impact will be damaging.”

The Government also noted that “the permanent disapplication of the rules would mean divergence between Northern Ireland and Ireland (and the broader EU), and thus it would be a matter for the EU how to deal with the consequent impact on their market. Recognising this, the EU will have the ability to take ‘appropriate remedial measures’.”<sup>226</sup>

In its Unilateral Declaration on the *Involvement of the institutions of the 1998 Agreement*, the Government stated that “the mechanism will operate solely and exclusively in the event that after the date of this declaration, the Northern Ireland Executive has been restored and become operational, including with a First Minister and deputy First Minister in post, and the Northern Ireland Assembly has been in regular session. Thereafter, Members of the Legislative Assembly ... wishing to operate the mechanism must be individually and collectively seeking in good faith to fully operate the institutions, including through the nomination of Ministers and support for the normal operation of the Assembly.”<sup>227</sup>

### **The Commission’s position**

The Commission described the Stormont Brake as “a new emergency mechanism”, and emphasised that it can be used “in the most exceptional circumstances, as a last resort as set out in a unilateral UK Declaration, to stop the application of amended or replacing provisions of EU law, that may have a significant and lasting impact specific to the everyday lives of communities in Northern Ireland. ...

“The Stormont Brake can be triggered only after having used every other available mechanism, and where the amended or replacing EU act, or a part of it, significantly differs in scope or content from the previous one and application of such amended or replacing act would have a significant impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist.”

The Commission also stated that for a notification under Article 13(3)(a) to be made “in good faith, it needs to be made under each of the conditions set out in the Unilateral Declaration made by the United Kingdom” and that an “arbitration panel may rule on whether these conditions have been met.”<sup>228</sup>

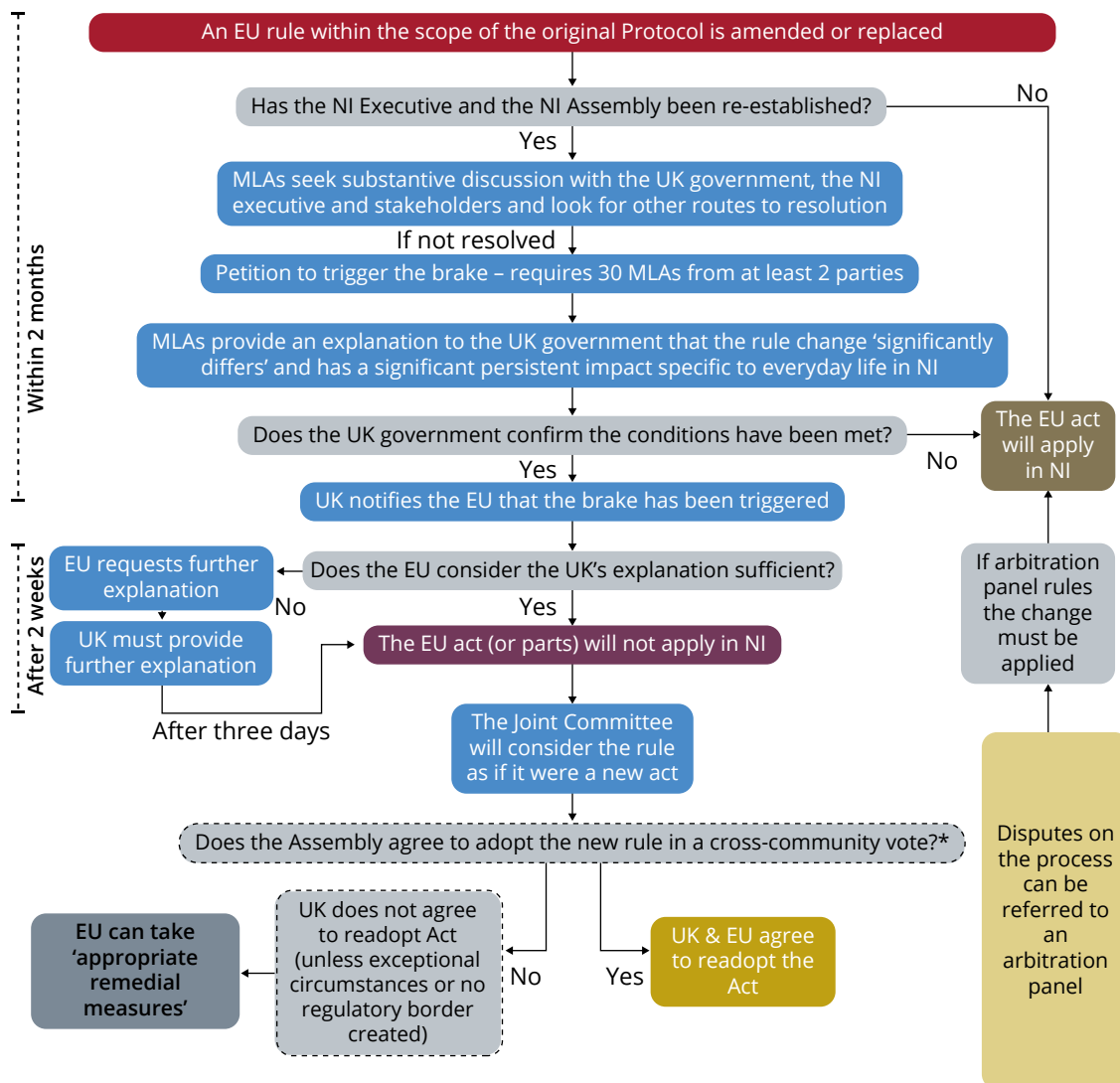
226 [The Windsor Framework: A new way forward](#) [accessed 12 July 2023]

227 See: Annex I Unilateral Declaration by the United Kingdom Involvement of the institutions of the 1998 Agreement in HM Government, *Decision of the Withdrawal Agreement Joint Committee on laying down arrangements relating to the Windsor Framework*, 24 March 2023, p 28: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1145694/Decision\\_of\\_the\\_Withdrawal\\_Agreement\\_Joint\\_Committee\\_on\\_laying\\_down\\_arrangements\\_relati.../Windsor\\_Framework.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1145694/Decision_of_the_Withdrawal_Agreement_Joint_Committee_on_laying_down_arrangements_relati...) [accessed 12 July 2023].

228 [Questions and Answers: political agreement in principle on the Windsor Framework, a new way forward for the Protocol on Ireland / Northern Ireland](#) [accessed 12 July 2023]

202. The Institute for Government has published a flowchart setting out how the Stormont Brake mechanism will work.

**Figure 1: The Stormont Brake mechanism**



\* 50% of MLAs + 50% nationalists and unionists or 60% of MLAs + 40% nationalists and 40% unionists

Source: Institute for Government, ‘Stormont Brake: The Windsor Framework -10 March 2023’: <https://www.instituteforgovernment.org.uk/explainer/stormont-brake-windsor-framework> [accessed 12 July 2023]

*The Windsor Framework (Democratic Scrutiny) Regulations 2023*

203. Following the announcement of the Windsor Framework, the Government brought forward the Windsor Framework (Democratic Scrutiny) Regulations 2023, which amended the Northern Ireland Act 1998 to give effect to the Stormont Brake in domestic law and set out the process for triggering the mechanism. The Regulations also provided for a new Windsor Framework Democratic Scrutiny Committee of the Northern Ireland Assembly, specifying its function to “support MLAs in considering whether to seek to use the Brake” by undertaking “inquiries and reports”, and setting the timescales by which it must publish an inquiry report and associated

materials as “no later than 15 working days before the end of the two month scrutiny period” in which the Brake can be triggered.<sup>229</sup>

204. The Regulations also set out that “the UK Government must accept an MLA notification which meets the criteria set out in the Windsor Framework” or, if the Government rejects a notification, that the “Secretary of State must provide written reasons in any case where a notification is not accepted.”
205. The Stormont Brake potentially applies to much (although not all<sup>230</sup>) of the EU legislation listed in the relevant Annexes to the Protocol as amended or replaced, under Article 13(3) of the Windsor Framework. However, the Regulations also introduced a new procedure for entirely new EU rules potentially applying to Northern Ireland under Article 13(4) of the Protocol, known as the cross-community ‘applicability motion’. While the UK has always had the ability under Article 13(4) not to agree to new EU laws being added to the Annexes, there has not previously been a statutory process that determines the position the UK will take in dialogue in the Withdrawal Agreement Joint Committee on the applicability of a new law. The new Regulations would prohibit the Government from agreeing to add any new EU law to the Annexes to the Windsor Framework under Article 13(4) “through the UK-EU Joint Committee unless there has been cross-community agreement to its application in the Assembly, or other highly limited circumstances are applicable.” Importantly, this applies both to new EU acts within the scope of the Protocol/Windsor Framework and amendments or replacement EU acts to which the Stormont Brake has been applied.<sup>231</sup>
206. An ‘applicability motion’ could only be passed with cross-community support. Under the Northern Ireland Act 1998, this is defined as having the support of a simple majority of the MLAs voting, including a majority of the designated nationalists voting and majority of the designated unionists voting; or the support of at least 60% of the MLAs voting, including at least 40% of the designated nationalists voting and 40% of the designated unionists voting.
207. However, the Regulations would allow the UK Government to agree in the Joint Committee to the application of an EU act under Article 13(4) without a cross-community vote in favour, if the Government considered that either there are exceptional circumstances (including that the Assembly or the Executive are not fully functioning) or that the new EU act would not create a new regulatory border between Great Britain and Northern Ireland. The Explanatory Memorandum accompanying the Regulations stated that: “If proposing to add a new rule to the Windsor Framework in either of those scenarios, a Minister must make a statement to Parliament before doing so,

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229 HM Government, *Explanatory Memorandum to the Windsor Framework (Democratic Scrutiny) Regulations 2023*: [https://www.legislation.gov.uk/ukdsi/2023/9780348246322/pdfs/ukdsiem\\_9780348246322\\_en.pdf](https://www.legislation.gov.uk/ukdsi/2023/9780348246322/pdfs/ukdsiem_9780348246322_en.pdf) [accessed 15 June 2023]

230 House of Lords Library analysis states that “the Stormont brake does not apply to all areas of EU law covered by the protocol. Article 13(3a) specifies that it will apply only to amendments/replacements of certain entries in the annexes, covering some EU customs rules, most of the EU goods rules, and reliefs from customs duty on personal property.” See: House of Lords Library, ‘*Windsor Framework (Democratic Scrutiny) Regulations 2023 and the Stormont brake*’: <https://lordslibrary.parliament.uk/windsor-framework-democratic-scrutiny-regulations-2023-and-the-stormont-brake/>

231 *Windsor Framework (Democratic Scrutiny) Regulations 2023 and the Stormont brake* and *Explanatory Memorandum to The Windsor Framework (Democratic Scrutiny) Regulations 2023* [accessed 12 July 2023]



explaining why they are of the opinion that either of the circumstances have been met.”<sup>232</sup>

208. Both Houses approved the Windsor Framework (Democratic Scrutiny) Regulations 2023 in March 2023.

*Evidence received*

*The scope of the Stormont Brake*

209. Jess Sargeant said that “the Stormont Brake does give the Northern Ireland Assembly the power to raise concerns about the implementation of new EU regulation, and that is a big improvement from the situation under the initial Protocol, where those laws were automatically applied.” She told us that the “EU has emphasised its exceptional nature as an emergency mechanism, whereas the UK Government have not presented it in the same terms, suggesting that it is wider.” Nevertheless, “if you look at the detail of both the UK and the EU documents, the actual conditions that are applied to the Stormont Brake are the same. It is more about the differences selling the deal, rather than the substance.”<sup>233</sup>
210. Dr Lisa Claire Whitten also pointed out that “in both the UK and the EU constitutional context ... that process is quite innovative”. For the EU, “the Stormont Brake provides a small group of elected representatives in a sub-state polity and a third country the capacity to initiate a brake on the evolution of EU legislation, albeit confined to the borders of Northern Ireland and with the possibility of remedial action.” From a UK perspective, “the Article 13(3)(a) aspect of the Stormont Brake offers MLAs in Stormont an avenue for decisive effect on a formerly reserved area of UK-EU relations.”<sup>234</sup>
211. On the other hand, other witnesses pointed to the Stormont Brake’s limited scope. James Webber noted that “the Stormont Brake does not apply to all EU laws across the whole of the Protocol. It is limited to those set out in headings 1 and 7, and then 7 to 47 of Annex 2, and the EU laws that define the relief from duties on personal possessions under Article 5.1.” He also stated that there “are laws outside the scope of the Stormont Brake that will apply in Northern Ireland—for example, VAT, the customs code, the single electricity market, state aid, trade and defence.”<sup>235</sup> Dr Cillian McGrattan, Lecturer in Politics, Ulster University, agreed that the scope of the Stormont Brake was narrow.<sup>236</sup>
212. The TUV pointed out that “the hundreds of EU laws applied to NI by Art 5(4) and Annex 2 of the Protocol remain and none of them are subject to local control or variation—the much vaunted ‘Stormont Brake’ has no application to these existing imposed laws.”<sup>237</sup> Martin Howe KC agreed.<sup>238</sup>
213. In that context, we also note that the House of Commons European Scrutiny Committee has sought clarity from the Government whether “EU tertiary

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232 *Explanatory Memorandum to the Windsor Framework (Democratic Scrutiny) Regulations 2023*, [accessed 15 June 2023]

233 [Q 1](#)

234 [Q 48](#)

235 [Q 2](#)

236 Written evidence from Dr Cillian McGrattan ([IWF0002](#))

237 Written evidence from TUV ([IWF0038](#))

238 [Q 48](#)

legislation—delegated and implementing acts—are within the scope of the Stormont Brake”.<sup>239</sup>

*Pulling the Stormont Brake*

214. James Webber said that “the ability to exercise the Brake is quite strongly circumscribed and tightly drafted.” Firstly, the “law objected to must significantly differ from the previous one.” As well as this, the law must have a “significant impact, which is specific to the everyday life of communities in Northern Ireland and is liable to persist”, and the “determination of that threshold is also subject to EU dispute mechanisms.”<sup>240</sup> Martin Howe KC agreed.<sup>241</sup>
215. Professor Katy Hayward pointed out that the Windsor Framework (Democratic Scrutiny) Regulations 2023 do not contain:
- “clarification on the process by which the Government would decide whether the tests of Article 13.3a (para 1c) are met for the use of the Stormont Brake. Instead this is ultimately a decision for the Secretary of State. The only constraints here are in terms of a tight timeframe.”<sup>242</sup>
216. Women’s Platform welcomed in principle the idea of “engaging the Northern Ireland institutions in operation of the Framework” but cautioned that clear criteria for what constitutes a ‘significant’ issue under the Stormont Brake are not set out.<sup>243</sup>
217. Professor Simon Usherwood, Professor of Politics and International Relations, The Open University, said that the “arrangements offer a pathway for the Northern Ireland Assembly to express their concern over new EU legislation, but do not give any right of veto to the Assembly, since the UK Government is not obliged to accept the Assembly’s notifications. In addition, a refusal to adopt new legislation may result in the EU taking “appropriate remedial measures” under the Withdrawal Agreement dispute settlement mechanism. He concluded that “this all comes with an extensive set of limitations and thresholds: while substantial, these are not impossible to clear, although the onus will lie very firmly with the Assembly to ensure they are met.”<sup>244</sup>

*Political and economic impact of the Stormont Brake*

218. We also heard evidence concerning the potential impact of the Stormont Brake on political and economic stability in Northern Ireland. The Alliance Party of Northern Ireland said that the “Stormont Brake mechanism poses the risk of adding further instability to what is an already unstable situation. ... A restored Assembly risks experiencing a succession of manufactured rows and stand-offs in relation to updates or amendments of EU law.”<sup>245</sup> This point was echoed by several witnesses, including the Centre for Cross Border Studies<sup>246</sup> and Professor Katy Hayward, who added that the Stormont Brake

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239 European Scrutiny Committee, *Eighteenth Report of Session 2022–23: Documents considered by the Committee on 24 May 2023 relating to the Windsor Framework* (Eighteenth Report, Session 2022–23, HC 119)

240 [Q 2](#)

241 [Q 48](#)

242 Written evidence from Professor Katy Hayward ([IWF0003](#))

243 Written evidence from Women’s Platform ([IWF0009](#))

244 Written evidence from Professor Simon Usherwood ([IWF0010](#))

245 Written evidence from the Alliance Party of Northern Ireland ([IWF0019](#))

246 Written evidence from the Centre for Cross Border Studies ([IWF0004](#))

“allows a third of MLAs to block updates to EU laws that could have serious and complex consequences for Northern Ireland.”<sup>247</sup>

219. Some witnesses warned that the Stormont Brake could create instability by provoking retaliatory measures from the European Union. Though he viewed the Stormont Brake as an improvement on the status quo, Anton Spisak nevertheless pointed to “a significant risk” that the Stormont Brake would create the potential for future disputes, and “that it might, in some circumstances, encourage hostility towards the EU and be tested in ways that are not currently envisaged under the current arrangement.”<sup>248</sup>
220. James Webber said that “there is quite a strong assumption that the EU will act in good faith and that those remedial measures will be in proportion to the threat to the Single Market represented by the law that you are attempting to disapply using the Stormont Brake”. However, “that is essentially a political obligation. The remedial measures are for the EU to decide.”<sup>249</sup>
221. Several witnesses also argued that the Stormont Brake had the potential to have a negative economic impact.
222. The Alliance Party of Northern Ireland stated that “from the perspective of the business community and other economic actors”, any uncertainty regarding compliance with EU legislation in Northern Ireland “could blunt our region’s investment narrative based around dual market access.”<sup>250</sup>
223. Declan Gormley agreed:
- “If I was going to invest a significant amount of money in Northern Ireland today and I wanted to base myself there to avail of the undoubted advantages of that, I would be very reluctant to do so if I thought that perhaps in four years’ time the Stormont Brake could be used and the advantages I thought I was investing in disappeared.”<sup>251</sup>
224. Co-operation Ireland pointed out that, while there is a high threshold for use of the Stormont Brake, “it is at least conceivable that significant differences could emerge in affected sectors over time. Under the Windsor Framework, the EU would be entitled to take ‘remedial measures’ which could potentially have implications for North-South trade and cooperation.”<sup>252</sup>
225. Dr Lisa Claire Whitten cautioned that the Stormont Brake creates “a new possibility for Northern Ireland to find itself in a position of dual divergence in respect of both the rest of the UK and Ireland and the EU if, under the Stormont Brake procedures, there is a pause in the evolution of EU law under a particular instrument.”<sup>253</sup>

*Providing a motivation for early engagement with Northern Ireland*

226. However, several witnesses argued that the potentially negative consequence of pulling the Stormont Brake could focus minds on all sides on finding solutions to possible problems at the earliest stages of the EU legislative

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247 Written evidence from Professor Katy Hayward ([IWF0003](#))

248 [Q 1](#)

249 [Q 2](#)

250 Written evidence from the Alliance Party of Northern Ireland ([IWF0019](#))

251 [Q 59](#)

252 Written evidence from Co-operation Ireland ([IWF0015](#))

253 [Q 54](#)

process. Glyn Roberts, for instance, described the Stormont Brake as “the nuclear option”, which should be preceded by extensive consultation, including with business.<sup>254</sup>

227. Jess Sargeant said that a “really underappreciated part of the Stormont Brake” is that “it creates a very strong incentive for both the UK and the EU to come to a mutual agreement, rather than get to that cliff-edge point where nobody really knows exactly what would happen.”<sup>255</sup>
228. The Centre for Cross Border Studies said that to avoid possible uncertainty and tensions if the Stormont Brake is pulled, “it is crucial that politicians and officials engage with developments in EU policy and legislation at the earliest opportunity.”<sup>256</sup>
229. Professor David Phinnemore argued that the new opportunities for stakeholder engagement created by the Windsor Framework should mean that “contestation can be kept to a minimum and there would be fewer instances in which the Assembly would want to trigger the ‘Stormont Brake’.”<sup>257</sup>

*Article 2 of the Windsor Framework*

230. The Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland submitted evidence<sup>258</sup> on the potential impact of the Stormont Brake on Article 2 of the Protocol/Windsor Framework, a point also raised by Dr Lisa Claire Whitten.<sup>259</sup> Article 2 sets out that the UK Government “shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 [Belfast/Good Friday] Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the [European] Union.”
231. The Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland in their joint submission welcomed the fact that the Stormont Brake did not apply to the Equality Directives listed in Annex 1 to the Windsor Framework. Nevertheless, they “consider that there is the potential for the ‘Stormont Brake’ mechanism as regards certain EU law in the Windsor Framework Annex 2 to have implications for equality and human rights in NI.” The Commissions gave the examples of Article 24 of the 2006 Directive on machinery, and the amending Directive on the manufacture of lifts in relation to access for, and use by, disabled people. Under the previous arrangements, argued the Commissions, “any future EU changes” to these Regulations or Directives “would have been subject to the ‘keeping pace’ requirement and automatically applied to Northern Ireland.”
232. The Commissions recommended that equality and human rights considerations should be built into all key stages of the Stormont Brake mechanism, including inquiries by the Northern Ireland Assembly Windsor Framework Democratic Scrutiny Committee.<sup>260</sup>

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254 [Q 59](#)

255 [Q 2](#)

256 Written evidence from the Centre for Cross Border Studies ([IWF0004](#))

257 See Appendix 4: Note of Virtual Seminar on the Democratic Deficit in relation to the Protocol on Ireland/Northern Ireland, 1 March 2023

258 Joint written evidence from the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland ([IWF0025](#))

259 [Q 48](#)

260 Joint written evidence from the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland ([IWF0025](#))

*The cross-community ‘applicability motion’ mechanism*

233. The ‘applicability motion’ mechanism was not referred to in the legal texts which comprise the Windsor Framework. However, the UK Government Command Paper included a commitment that “the Government would not be able to proceed to add any new rule under Article 13(4) without cross-community support.”<sup>261</sup> The UK Government then introduced the mechanism in the Windsor Framework (Democratic Scrutiny) Regulations 2023.
234. Jess Sargeant said that this mechanism enhanced the ability of the Northern Ireland Assembly to input into the law-making process:
- “It essentially creates a two-stage process for the Stormont Brake. The first stage is the 30 MLAs triggering it on an amendment or an update, which leads to its automatic suspension as long as the UK agrees that the conditions for triggering it have been met, so you are in this position where that EU law no longer applies. Then there is a second stage where the Joint Committee is required to consider the amendment or update on which the Brake has been pulled as if it were a completely new law. At that stage, there is another opportunity for the Assembly to have input.”<sup>262</sup>
235. Anton Spisak agreed that the ‘applicability motion’ “is a very significant change to the way this process will work in practice, and it gives elected Northern Irish representatives a far greater say over any future changes to EU law than we have previously seen.”<sup>263</sup>
236. Professor Katy Hayward said:
- “The applicability motion amends the operation of Article 13(4) of the Protocol which previously allowed a UK Government veto without any consultation with Northern Ireland. However ... the existence of the applicability motion should not be seen as unequivocally handing decision making capacity here to the NI Assembly.”
237. Professor Hayward also pointed out:
- “A new EU law could be seen as applicable for the Protocol that relates to an area of North-South cooperation, but it may be rejected through an applicability motion, by it not meeting cross- community support. ... The very possibility of a veto by one community over this process by definition makes the matter one of community identity and division. This is not necessarily the best or only means of finding stability.”<sup>264</sup>
238. Dr Andrew McCormick agreed and added that the cross-community ‘applicability motion’ could have economic consequences. He said that if the application of a new law is “essential, in the EU’s view, to allow Northern Ireland’s continued participation in the Single Market” and does not get cross-community support, then “it does not apply and the EU invokes remedial measures”. In this scenario, “if the consequence of that vote is to put our participation in the EU Single Market at risk, the world’s most exciting economic zone becomes an issue that could be overturned by a minority.”

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261 *The Windsor Framework: A new way forward*

262 Q 2

263 *Ibid.*

264 Written evidence from Professor Katy Hayward ([IWF0003](#))

He questioned “whether a decision of that substance should be made on the basis of a minority view in Northern Ireland.”<sup>265</sup>

*Northern Ireland Assembly Windsor Framework Democratic Scrutiny Committee*

239. A number of witnesses set out views on the Northern Ireland Assembly’s new Windsor Framework Democratic Scrutiny Committee, provided for by the Windsor Framework (Democratic Scrutiny) Regulations 2023.
240. Professor Katy Hayward raised a number of questions in relation to the Committee’s role and function. She noted that the Regulations state that if “the Committee decides to hold an inquiry on an EU act, it ‘must seek substantive discussion and engagement’ with the UK Government, Northern Ireland Ministers and wider stakeholders”, and queried why it was described in these terms rather than “a much more typical process of ‘taking evidence?’” This, she said, “implies that this is primarily a process to happen in private rather than in public”, which would be a “cause for concern, not least given the potential for disputes over the decision of the Committee and the potential for that to destabilise the Assembly itself.” Professor Hayward also expressed concern over the transparency of the Committee’s processes.
241. Professor Hayward perceived “no clear role for the Committee with respect to the pulling of the Stormont Brake.” While the Committee must report five working days before the deadline to pull the Brake, “it could be triggered before then—potentially more than once.” As such, “although ‘any use of the Brake would ordinarily follow the Committee’s work’, there is nothing to prevent MLAs from pre-empting it.”<sup>266</sup>
242. Witnesses also stressed the importance of effective resourcing of the Windsor Framework Democratic Scrutiny Committee, and the Northern Ireland institutions more widely, including the Northern Ireland Civil Service, for their work in relation to the Stormont Brake.
243. Dr Viviane Gravey, Dr Billy Melo Araujo and Dr Lisa Claire Whitten said that “operating the Stormont Brake processes is very likely to put a strain on NI officials and politicians’ capacity and resource.”<sup>267</sup> Dr Andrew McCormick and the Centre for Cross Border Studies agreed.<sup>268</sup>

*Conclusions*

244. **We have previously drawn attention to the democratic deficit under the original Protocol, whereby areas of EU law applied to Northern Ireland without its prior consent. There are a range of views on the extent to which the Windsor Framework, including the Stormont Brake and ‘applicability motion’ mechanisms, addresses this deficit.**
245. **Some witnesses welcomed the Stormont Brake as an innovation within the context of EU law, and viewed it as a significant expansion of the role of the Northern Ireland Assembly in the EU legislative process, and an expansion in its role to areas previously reserved for Westminster. They also stressed that it created an incentive for early engagement by the EU and UK with Northern Ireland stakeholders,**

265 [Q 2](#)

266 Written evidence from Professor Katy Hayward ([IWF0003](#))

267 Written evidence from Dr Viviane Gravey, Dr Billy Melo Araujo and Dr Lisa Claire Whitten ([IWF0022](#))

268 [Q 3](#) and written evidence from the Centre for Cross Border Studies ([IWF0004](#))

in order to identify and address issues, and prevent the Stormont Brake needing to be pulled.

246. At the same time, several witnesses called for clarity on the operation of the Stormont Brake. *In particular, we invite the Government to clarify the process by which it would decide whether the tests have been met for the use of the Brake.*
247. Other witnesses stressed that the Stormont Brake has a limited scope and applies only to new, amending or replacement EU laws, and not those that currently apply to Northern Ireland. Further, it applies only to a sub-set of rules within the scope of the original Protocol. It also means that the Assembly can only reject laws within its scope, and cannot make those laws for itself. *In this context, we invite the Government to clarify whether EU tertiary legislation—delegated and implementing acts—are within the scope of the Stormont Brake.*
248. Some witnesses also argued that the conditions which must exist for the Stormont Brake to be pulled set a high bar for its use. Several stressed that it is the UK Government, not the Northern Ireland Assembly, which retains the power to exercise a veto, and that a notification from Members of the Legislative Assembly (MLAs) can be set aside by the Secretary of State for Northern Ireland in a number of circumstances. Furthermore, any exercise of a veto can result in ‘remedial action’ by the EU. *We invite the Government’s response and clarification on this matter, in particular setting out what factors it will take into account in deciding whether to exercise its veto, including how to reflect the views of the Northern Ireland Assembly.*
249. We also note witnesses’ concern about the potential political and economic ramifications of the Stormont Brake. Some feared that it could destabilise the political institutions. There were also warnings that this instability could create economic uncertainty for businesses and investors, as well as potentially provoking remedial action by the EU, with potential implications for Northern Ireland’s access to the Single Market for goods. *We invite the Government’s response and clarification on this matter.*
250. We note, too, that many of the points raised about the Stormont Brake also apply to the cross-community ‘applicability motion’ mechanism introduced by the Windsor Framework (Democratic Scrutiny) Regulations 2023.
251. The new Northern Ireland Assembly Windsor Framework Scrutiny Committee will be an important means to facilitate the Assembly’s scrutiny of the Windsor Framework. Witnesses raised important questions about the role of the Committee in relation to the pulling of the Stormont Brake, and the public visibility of its work. Several witnesses also emphasised the resource implications of the Stormont Brake mechanism on the Northern Ireland Assembly, Executive and Civil Service. *We invite the Government to set out how it will support the Northern Ireland Assembly Windsor Framework Scrutiny Committee, and the Assembly, Executive and Northern Ireland Civil*

*Service more generally, in undertaking these functions, including ensuring they have sufficient resources to do so.*

## **The Windsor Framework and the Belfast/Good Friday Agreement**

### *The UK and EU positions*

252. We set out below the UK and EU’s descriptions of the Windsor Framework’s interaction with and impact on the Belfast/Good Friday Agreement, as described in the UK-EU joint Political Declaration on the Windsor Framework, the Foreign Secretary’s evidence to the Committee, and the statement by Commission President Ursula von der Leyen.

### **Box 16: The UK and EU positions**

In the joint ‘Political Declaration by the European Commission and the Government of the United Kingdom’ on 27 February 2023, both sides recalled the “full commitment of the European Union and of the United Kingdom to protecting the Good Friday or Belfast Agreement of 10 April 1998, including its subsequent implementation agreements and arrangements, in all its dimensions and in all its strands.”<sup>269</sup>

#### **The Government’s position**

The UK Government stated that “the Windsor Framework protects Northern Ireland’s place in our Union and its internal market, preserves the delicate balance inherent in the Belfast (Good Friday) Agreement, and maintains the full access to the EU market for businesses in Northern Ireland that so many underlined as important.”<sup>270</sup>

#### **The Commission’s position**

The Commission’s position, as outlined by President Ursula von der Leyen on 27 February 2023, is that the Windsor Framework “protects the very hard-earned peace gains of the Belfast/Good Friday Agreement for the people of Northern Ireland and across the island of Ireland.”<sup>271</sup>

### *Evidence received*

#### *Addressing unionist concerns*

253. A number of witnesses acknowledged that the original Protocol had generated a sense of unease among unionists concerning Northern Ireland’s place within the UK. As Co-operation Ireland explained:

“For many in the unionist community, the Protocol came to be seen as a betrayal and a threat to Northern Ireland’s position in the Union. Having been promised that no barriers would be imposed on East-West trade, tensions rose as the everyday effects of the Protocol became apparent in early 2021 with restrictions on the movements of certain goods and a growing perception that Northern Ireland consumers were being cast adrift from the GB market. The Protocol was seen to have altered Northern Ireland’s constitutional status without consent,

269 *Political Declaration by the European Commission and the Government of the United Kingdom*

270 Written evidence from HM Government - Rt Hon James Cleverly MP, Secretary of State for Foreign, Commonwealth and Development Affairs ([IWF0042](#))

271 European Commission, *Statement by President von der Leyen at the joint press conference with UK Prime Minister Sunak* (27 February 2023): [https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_23\\_1270](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_23_1270) [accessed 12 July 2023]



with its practical outworking fuelling a sense that British identity and citizenship were being diminished in the region.”<sup>272</sup>

254. Some witnesses stressed that the Windsor Framework, and in particular the Stormont Brake, were an attempt by the UK Government and the EU to address unionist concerns. Lord Murphy of Torfaen said that the Framework “was developed for two reasons ... to unlock all the problems that Northern Ireland has faced since the Protocol was introduced with regard to goods entering Northern Ireland from Britain,” and “to try to resolve the democratic deficit that was the basis of, in particular, the unionist community’s concern about the document.”<sup>273</sup>
255. Lord Bew said that the Stormont Brake “is designed to deal with a unionist fear” of Northern Ireland “radically de-aligning” from the United Kingdom. He argued that “the UK Government have negotiated the Brake primarily with a view to reducing unionist alienation.”<sup>274</sup>
256. Some witnesses felt that the Windsor Framework went some way towards addressing unionist concerns. Lord Murphy of Torfaen said that the Framework “handles that reasonably well”, though he warned that “as is always the case in Northern Ireland, if you design something too much for one side, you possibly design it not enough for another. That is the great balancing act that we have to make sure is addressed with this proposal.”<sup>275</sup>
257. Co-operation Ireland said, likewise, that it was “plausible to suggest that, from a unionist perspective, the position reached as a result of the Windsor Framework negotiations offers a potential strengthening of the Union by enabling Northern Ireland to enjoy economic opportunities that would not be available in a united Ireland.”<sup>276</sup>
258. Others, however, disagreed. Martin Howe KC argued that the “worst element of the Windsor Framework was the agreement to abandon the Northern Ireland Protocol Bill”, which he said could have been a “much more effective way of addressing the constitutional problems.” As we have seen, he argued that, compared to the Northern Ireland Protocol Bill:

“The Windsor Framework makes worse, rather than better, the fundamental constitutional problem: the presence of a foreign law-making power, Executive and court system on the territory of the United Kingdom, resulting in citizens in one part of the United Kingdom being subject to a system of laws different from that in the rest of the country, without any democratic means of altering or removing those laws.”<sup>277</sup>

259. The TUV argued similarly:

“The Union that matters, and to which TUV is committed, is the Union that binds NI to GB, not the EU. Yet, shamefully, we have been left under the substantial control of the EU and colony-like subject to its laws and court. ... For anyone whose compass is set by sovereignty

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272 Written evidence from Co-operation Ireland ([IWF0015](#))

273 [Q 11](#)

274 [Q 13](#)

275 [Q 11](#)

276 Written evidence from Co-operation Ireland ([IWF0015](#))

277 [Q 47](#)

considerations and whose goal is the strengthening, not weakening, of the Union with GB, this is a deal which falls far short.”<sup>278</sup>

*Nationalist and ‘other’ perspectives on the Protocol and the Windsor Framework*

260. We received limited evidence on nationalist and ‘other’ perspectives on the Protocol and Windsor Framework in this inquiry. However, as Co-operation Ireland stated:

“Perceptions of the Protocol varied strongly with political views and community background in Northern Ireland. For many nationalists, and those in the middle ground, it was seen as the least-worst option—while negative aspects [arising from Brexit] were recognised, including the ending of Northern Ireland’s access to the EU Single Market for services, it provided a robust mechanism to avoid a hard border on the island and safeguard the 1998 Agreement and also offered potential economic opportunities with dual access to both the EU and UK internal markets.”<sup>279</sup>

261. The Alliance Party of Northern Ireland said that while there was “no perfect solution” to the challenges created by Brexit, the “Protocol served to protect the [Belfast/Good Friday Agreement] as best as possible” and the “Windsor Framework is an improvement upon this”. The Alliance Party of Northern Ireland did not “see the Protocol nor the Windsor Framework as contrary to the Principle of Consent. Consent applies to the ultimate constitutional position of Northern Ireland. It is not impacted by either the Protocol or the Windsor Framework.”<sup>280</sup>

*Protecting the Belfast/Good Friday Agreement*

262. More broadly, Jess Sargeant said that the Windsor Framework “goes a long way to try to protect” the three strands of the Belfast/Good Friday Agreement—the Northern Ireland institutions, North-South co-operation and the East-West relationship. She stressed that “the purpose of it is to try to restore the domestic institutions that are obviously a very important element of this”. As well as maintaining North-South co-operation:

“One of the things that the agreement does very well is re-establish the East/West dimension and improved relationships between the UK Government and the Irish Government, which have really suffered as a consequence of Brexit and the ongoing disagreement. The extent to which those seem to have repaired quite quickly after this new agreement has been very heartening.”<sup>281</sup>

263. The Centre for Cross Border Studies stated, likewise, that the “Windsor Framework fulfils a significant role in abiding by the UK and EU’s joint commitment to protect the Belfast/Good Friday Agreement” and added that “unilateral policies pursued beyond the scope of the Framework will potentially undermine the totality of relations that the Good Friday/Belfast Agreement encompasses”, unless these policies are “subject to rigorous

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278 Written evidence from the TUV ([IWF0038](#))

279 Written evidence from Co-operation Ireland ([IWF0015](#))

280 Written evidence from the Alliance Party of Northern Ireland ([IWF0019](#))

281 [Q 4](#)

assessments of how they may impact on the 1998 Agreement and modified or abandoned accordingly.”<sup>282</sup>

264. Anton Spisak argued that the Windsor Framework reflected a new-found appreciation by the EU of the delicate balance of the Belfast/Good Friday Agreement: “It reflects that special status of Northern Ireland and the special conditions that the Good Friday Agreement established. That is now more reflected in the European Union’s position, in its own legislation and in how it treats Northern Ireland.”<sup>283</sup> Dr Lisa Claire Whitten detected in the Windsor Framework “a rebalancing or corrective to the previous agreement under the unamended Protocol, which focused primarily on ensuring that conditions for North-South trade and co-operation could continue to the extent possible after Brexit.”<sup>284</sup>
265. James Webber argued that the original Protocol “was about protecting the EU Single Market, as is the Windsor Framework; that is its purpose.” He stated that it was “probably a step forward that the EU seems to be increasing its understanding of some of the issues and complications, but, ultimately, in my view, it is not really about the Good Friday Agreement; it is about protecting the EU Single Market.”<sup>285</sup>
266. Martin Howe KC agreed that the Protocol “was and remains extremely damaging to the 1998 Agreement because it undoubtedly gravely affects the constitutional status of Northern Ireland within the United Kingdom”. He argued that the “concentration in the Government’s rhetoric on the East-West trade issue arises because it is the East-West trade issue that is damaged by the Protocol in the first place.”<sup>286</sup>

*Lessons from implementing the Belfast/Good Friday Agreement*

267. Professor David Phinnemore, Professor Katy Hayward and Dr Lisa Claire Whitten said that there were lessons to be learned for the Windsor Framework from the implementation of the Belfast/Good Friday Agreement, as noted by participants in a 25th Anniversary event hosted at Queen’s University Belfast in April 2023.
268. At that event, Lord Alderdice, the first Presiding Officer of the Northern Ireland Assembly, said that “the assumption of an ‘automatic momentum’ towards implementation of the Agreement after its conclusion was misplaced.” Dawn Purvis, former leader of the Progressive Unionist Party, regretted that “there had not been an ‘Implementation Committee’ established to oversee the roll-out of the Agreement and to monitor its operation as a whole.” Former deputy First Minister Mark Durkan noted that “even slight differences between the text of the Agreement and the implementing legislation ... proved very significant and disrupted the functioning and effects of the Agreement as originally envisaged.”<sup>287</sup>

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282 Written evidence from the Centre for Cross Border Studies ([IWF0004](#))

283 [Q 4](#)

284 [Q 49](#)

285 [Q 4](#)

286 [Q 49](#)

287 YouTube video, added by Queen’s University Belfast on ‘Agreement 25 Afternoon Programme: Panel: Building Peace - the Parties’ on 17 April 2023: <https://www.youtube.com/watch?v=8AN6sLjaBSM&t=2666s> [accessed 12 July 2023]

269. Professor Phinnemore, Professor Hayward and Dr Whitten concluded: “Such analysis shows that agreeing the Windsor Framework may be an achievement in itself, but the details of how it is implemented could potentially introduce new problems if not handled with equal care, good faith, attention, and adhesion to what was agreed.”<sup>288</sup>

*Conclusion*

270. **As the continued suspension of the power-sharing institutions demonstrates, political tensions in Northern Ireland over Brexit and the Protocol remain acute. We acknowledge the importance and the difficulty of resolving these issues to the satisfaction of all communities in Northern Ireland.**

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288 Written evidence from Professor David Phinnemore, Professor Katy Hayward and Dr Lisa Claire Whitten ([IWF0023](#))

## CHAPTER 8: THE ROLE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

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### The UK and EU positions

271. We set out below the UK and EU's descriptions of the role of the Court of Justice of the European Union (CJEU) under the Windsor Framework's provisions on the green and red lane and movement of agri-food products, as described in the Foreign Secretary's evidence to the Committee, and the Commission's 'Questions and Answers' document on the Windsor Framework.

### Box 17: The UK and EU positions

#### The Government's position

"The Government recognises that the CJEU is the sole arbiter of EU law, including with respect to the limited subset of EU law that continues to apply in Northern Ireland to maintain maximum market access for NI firms. However ... the Framework further reduces the EU rules that apply, and consequently, reduces any potential role for the CJEU. In the areas of food and drink safety, for example, it will be laws passed in the United Kingdom, and domestic case law, not the CJEU, which will determine the rules that apply to those goods moving from Great Britain, the predominant source of grocery retail supplies to Northern Ireland.

"At the same time, the potential role of the CJEU is strictly circumscribed within the Windsor Framework. ... The Framework disapplies more than 1,700 pages of EU law, and the CJEU oversight which comes with it. ...

"In addition, the agreement also establishes the Stormont Brake. ... This new safeguard in the treaty is not subject to CJEU oversight, and any dispute on this issue would be resolved through subsequent independent arbitration according to international, not EU, law. ...

"Furthermore, both the UK and EU have been clear in the Political Declaration accompanying the agreement that the Protocol, as amended, will be subject to the general principles of public international law as set out under the Vienna Convention on the Law of Treaties. This underlines that the fundamental underpinning of this arrangement is in international law, not EU law and the EU institutions."<sup>289</sup>

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289 Written evidence from HM Government - Rt Hon James Cleverly MP, Secretary of State for Foreign, Commonwealth and Development Affairs ([IWF0042](#)) and supplementary written evidence from HM Government - Rt Hon James Cleverly MP, Secretary of State for Foreign, Commonwealth and Development Affairs ([IWF0043](#))

### The Commission's position

“There is no change to the role of the Court of Justice of the European Union. The Court of Justice remains the sole and ultimate arbiter of EU law.

“The EU and the UK have committed to discuss any issues concerning the operation of the Protocol within the joint structures of the Withdrawal Agreement. These include the Joint Committee, the Specialised Committee on the Protocol and the Joint Consultative Working Group. They will make every attempt, through dialogue, to arrive at mutually satisfactory resolutions of matters that may arise in the implementation of the Protocol.”<sup>290</sup>

### Evidence received

272. Professor Simon Usherwood said that the role of the CJEU was the most obvious example of how the Windsor Framework did not address all the issues raised by the Government. He noted the absence of any direct reference to the CJEU in either the Political Declaration or the main Decision of the Withdrawal Agreement Joint Committee. Nevertheless, he said that the Court's powers in the context of the Windsor Framework were limited to “the provision of definitive interpretation of EU law, in support of the other mechanisms of the [Withdrawal Agreement] being able to function as intended by the signatories”:

“This reflects fundamental doctrines in the EU's legal order, notably on primacy, which speak to the necessity of a single point of definitive interpretation in the system, in order to maintain any practical effect to EU legal decisions. This speaks to the EU's nature as a legally-defined entity, based on treaties. Seen as such, it should be of no surprise that the EU was not prepared to make any concession on this point, especially given that this is already well articulated and bounded within the original [Withdrawal Agreement] text. There is no indication—in the EU's internal discussions or public pronouncement, or the Court's case law—that there is any desire for the Court to overstep its powers, as set out: in the highly unlikely event that it did, the [Withdrawal Agreement's] dispute settlement mechanisms (including remedial measures) would be available to the UK Government.”<sup>291</sup>

273. Dr Esmond Birnie noted that “the EU's position throughout has been that if Northern Ireland remains in the Single Market, then it must be subject to EU law, which in turn implies the supreme jurisdiction of the [CJEU]. In the Windsor Framework, the EU has substantially ‘won’ on this point, although it has made some concessions of a practical nature.”<sup>292</sup>
274. James Webber said that “there is substantively no change” to the role of the CJEU, except in the context of the Stormont Brake, where a dispute arising under it would be raised before the bilateral arbitration mechanism in the Withdrawal Agreement rather than directly to the CJEU. He added that “questions of EU law have to go to the CJEU because of the decisions of the CJEU itself. ... If you have EU law in your agreement, you have the [CJEU] in your agreement pretty much to the same extent.”<sup>293</sup>

290 *Questions and Answers: political agreement in principle on the Windsor Framework, a new way forward for the Protocol on Ireland / Northern Ireland* [accessed 12 July 2023]

291 Written evidence from Professor Simon Usherwood (IWF0010)

292 Written evidence from Dr Esmond Birnie (IWF0037)

293 Q 10

275. Anton Spisak asserted that there has been no material change to Article 12 of the Windsor Framework, which “also means that UK courts that are dealing with any domestic disputes relating to potential application of EU law would still be empowered to, and in some cases be under obligation to, seek preliminary reference to the [CJEU] with respect to those issues.” He also stressed:

“If you are a business in Northern Ireland that feels that its rights have been infringed by another company in the EU and seeks a remedy, it is in the interest of that business to ensure that it receives the same remedy as any other European business facing a similar issue. That is ultimately ensured by asking the European Court of Justice for its verdict.”<sup>294</sup>

276. We set out further analysis of the CJEU’s role in relation to State aid in Chapter 5, and in relation to the Stormont Brake in Chapter 7.

### Conclusion

277. **Aside from the new, specific provisions of the Stormont Brake, which we addressed in Chapter 7, there has been no substantive change to the Court of Justice of the European Union’s role as the final arbiter of EU law falling within the scope of the Windsor Framework. Nevertheless, in the context of the CJEU’s jurisdiction to hear infringement proceedings, we note that, to avoid recourse to the Court in disputes between the Parties, the UK and the EU have committed to using the dialogue mechanisms under the Withdrawal Agreement and Windsor Framework to arrive at mutually satisfactory resolutions. It remains to be seen how frequently the CJEU will be called upon in its role as the sole arbiter of EU law in the context of the Windsor Framework, whether in disputes between the Parties or in legal proceedings brought by individuals.**

## CHAPTER 9: DIALOGUE AND ENGAGEMENT

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### Overview

278. In this chapter, we assess the proposals in the Windsor Framework in relation to enhanced dialogue and engagement, both between the UK and the EU, and with Northern Ireland stakeholders. As set out in paragraph 21 of this report, our analysis and conclusions are without prejudice to the views of individual members on the Windsor Framework, including those members who argue that steps to enhance dialogue and engagement do not in themselves address the democratic deficit previously highlighted by the Committee.

### The UK and EU positions

279. We summarise below the UK and EU's descriptions of the Windsor Framework's provisions on dialogue and engagement, both with each other and with Northern Ireland stakeholders, as set out in the Foreign Secretary's evidence to the Committee, the Commission's 'Questions and Answers' document on the Windsor Framework, and its paper on *Enhanced engagement with Northern Ireland stakeholders*.

#### Box 18: The UK and EU positions

##### The Government's position

"The Framework's enhanced mechanisms for UK-EU cooperation ... which build on the existing structures established under the Withdrawal Agreement, will enable deepened cooperation to anticipate and deal with issues that may arise in the future, with new commitments to engage earlier and more intensively to look at the implications of new developments and rules. This reflects the shared UK-EU desire to make full use of these UK-EU structures to deal with any issues in operating the agreement. This underscores our shared commitment, as part of this new way forward overall, to resolve issues with the operation of the Windsor Framework through dialogue, rather than hair-trigger recourse to formal dispute proceedings. ...

"The Windsor Framework ... establishes the Enhanced Coordination Mechanism for VAT and excise. ... We have also established with the EU the Special Goods Body, which enables us to engage early where any rule changes could inadvertently lead to new regulatory barriers, to find appropriate solutions through the Joint Committee. ...

"Both the UK and Commission recognise the importance of engaging with NI stakeholders throughout the delivery of the Windsor Framework. ... We have agreed with the EU to establish regular engagement with Northern Ireland stakeholders, including citizens and businesses, at each level of the Withdrawal Agreement's structures and with the co-chairs of the Joint Committee. Work is underway with the Commission to take this work forward, following which we will be able to set out further detail. However, it is clear that those stakeholders have important insights to offer as the Framework is given effect.



“Separately, though, we also recognise the importance of detailed engagement with stakeholders as the UK takes forward its efforts to put the Framework into effect. Much of this work is already underway across departments, and we are intensifying that in the weeks ahead. That will involve a range of direct engagement and workshops to support trader readiness, and to inform implementation work within Government. As we move forward with our efforts, we will also be setting out clear guidance on what the new arrangements will mean in practice to support preparations. Of course, this will take account of the fact that not all elements of the Framework take effect at once, with some elements—such as new arrangements on parcels and the full operation of the new system for the movement of goods—coming into force in 2024, taking account of the need to provide appropriate time for traders to prepare. We will be able to set out further details on this in due course, and will be maintaining close contact with stakeholders throughout the process.”<sup>295</sup>

### **The Commission’s position**

“Thematic sub-groups will support the Joint Consultative Working Group (established under the Protocol). They will be composed of officials of the European Commission and of the Government of the United Kingdom. They will assist the working group in carrying out its functions as an effective forum for the exchange of information and mutual consultation.

“This will better ensure that the United Kingdom is able to discuss its views in the working group on EU acts within the scope of the Protocol, including on the basis of input provided by stakeholders in Northern Ireland, so they can be considered before such EU acts are adopted. ... Stakeholder input will be crucial to inform any discussions in the structured sub-groups. ...

“The Specialised Committee on the Protocol may convene in a specific composition, namely the Special Body on Goods, which may provide for exchanges of views on any future UK legislation regarding goods of relevance to the operation of the Protocol, including assessing any potential divergence between EU and UK rules. Where appropriate and when ensuring the effective implementation of the Protocol, the Specialised Committee can adopt recommendations for measures to be taken by the Joint Committee of the Withdrawal Agreement.”

“The Commission and the UK Government have agreed to establish an ‘Enhanced Coordination Mechanism’, where Protocol-related VAT and excise issues can be discussed. ...

“The Commission will introduce enhanced measures to deepen engagement with people and businesses in Northern Ireland. These arrangements will ensure that stakeholder perspectives could be presented and taken into account in a timely and meaningful manner, recognising that stakeholders have valuable insights to offer on Northern Ireland’s unique circumstances. ... In addition to this, together with the UK Government the Commission will ensure regular engagement with Northern Ireland stakeholders at each level of the Withdrawal Agreement’s structures, including with the co-chairs of the Joint Committee.”<sup>296</sup>

295 Written evidence from HM Government - Rt Hon James Cleverly MP, Secretary of State for Foreign, Commonwealth and Development Affairs ([IWF0042](#))

296 [Questions and Answers: political agreement in principle on the Windsor Framework, a new way forward for the Protocol on Ireland / Northern Ireland](#) [accessed 12 July 2023]

An accompanying Commission paper on *Enhanced engagement with Northern Ireland stakeholders* elaborated on the new ‘enhanced measures’, including:

- An annual presentation by the Commission on upcoming policy initiatives and legislative proposals, including engagement on the Commission Work Programme;
- Specific Northern Ireland information sessions on new EU initiatives and additional workshops for Northern Ireland stakeholders;
- Including Northern Ireland-relevant public consultations on the Commission’s Protocol webpage;<sup>297</sup> and
- Providing a Northern Ireland overview in relevant impact assessments accompanying new EU policy initiatives.<sup>298</sup>

### Evidence received

280. The Northern Ireland Business Brexit Working Group underlined the important role that business feedback played in identifying problems with the Protocol. They stressed that the existing UK-EU bodies—the Withdrawal Agreement Joint Committee, Specialised Committee on the Windsor Framework, and Joint Consultative Working Group—will need to meet regularly. They should also be informed by stakeholder engagement with the UK and EU jointly in these bodies, to avoid miscommunication and encourage joint, agreed responses to issues raised.
281. The Northern Ireland Business Brexit Working Group also welcomed the additional ‘specific compositions’ of the Specialised Committee—the Enhanced Coordination Mechanism on VAT and excise and the Special Body on Goods—and the thematic sub-groups of the Joint Consultative Working Group. However, they stressed that, as well as providing for official-level dialogue, these bodies also needed to ensure direct input from Northern Ireland stakeholders.
282. The Northern Ireland Business Brexit Group also welcomed the UK and EU joint commitment to establish regular engagement with Northern Ireland stakeholders “at each level of the Withdrawal Agreement’s structures and with the co-chairs of the Joint Committee”. They called for swift progress on agreeing the mechanisms for this engagement, as a joint endeavour and in collaboration with stakeholders.<sup>299</sup>
283. Stuart Anderson emphasised that the existing consultation structures had been:
- “quite disappointing in how they have been utilised with stakeholders. Our engagement to date has been ad hoc. It has been reactive rather than proactive, so issues ... have been dealt with at the last minute. ... When you have an issue and you approach the EU and the UK, you will get a different set of advice in relation to the same problem.”<sup>300</sup>

297 EUR-Lex - Access to European Union Law, ‘*Themes in focus: Protocol on Ireland/Northern Ireland*’: <https://eur-lex.europa.eu/content/news/index.html> [accessed 12 July 2023]

298 European Commission, *Commission statement on Enhanced engagement with Northern Ireland stakeholders* (27 February 2023): [https://commission.europa.eu/publications/commission-statement-enhanced-engagement-northern-ireland-stakeholders\\_en](https://commission.europa.eu/publications/commission-statement-enhanced-engagement-northern-ireland-stakeholders_en) [accessed 12 July 2023]

299 Written evidence from Northern Ireland Business Brexit Working Group ([IWF0041](#))

300 [Q 26](#)

284. The Ulster Farmers' Union stressed that, in order to represent the largest sector in Northern Ireland's economy, a stand-alone agri-food thematic sub-group was necessary. They stressed the importance of consultation with Northern Ireland Ministers and MLAs, and the need for the Commission to engage with the Northern Ireland Executive Office in Brussels, which would need increased resources.<sup>301</sup>
285. Glyn Roberts said that engagement on the Protocol had been very haphazard, and needed to be structured and focused on the day-to-day problems that businesses face. He called for the creation of a retail sub-group of the Joint Consultative Working Group.<sup>302</sup> Mark Tait called for intensified engagement with the road haulage sector, which he said had pointed out difficulties with the Protocol from an early stage.<sup>303</sup>
286. The Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland called on the UK and EU to honour their commitment to establish a sub-group within the Joint Consultative Working Group that focused on issues relating to Article 2 of the Windsor Framework, and equality and human rights issues in Northern Ireland.<sup>304</sup>
287. Women's Platform highlighted the need for the Windsor Framework to be communicated in 'clear language', to encourage open and frank engagement with communities, dispelling misconceptions. They also stressed the need for women's voices, and community and voluntary sector organisations more generally, to be better heard in decision-making.<sup>305</sup>
288. Professor David Phinnemore, Professor Katy Hayward and Dr Lisa Claire Whitten added that, while the new joint mechanisms were an enhancement, they were primarily focused on official-level dialogue, while the mechanisms for stakeholder engagement were less developed. They stressed that the Northern Ireland Civil Service and industry experts must be represented if the new bodies were to be effective. They also called for visible and accessible reporting on the activities of the various joint bodies and mechanisms, including to the Northern Ireland Assembly and the UK Parliament.
289. Professor Phinnemore, Professor Hayward and Dr Whitten likewise found that the Commission's 'enhanced measures' for engagement "are novel and provide a privileged form of consultative engagement that goes beyond arrangements the EU has as part of its relations with non-member states." They stressed that these measures needed to ensure meaningful opportunities for well-resourced stakeholder input into relevant EU proposals. They also pointed out that the UK Government had made no corresponding explicit commitment to enhanced engagement with Northern Ireland stakeholders.<sup>306</sup>
290. Professor Simon Usherwood said that the Commission proposals on enhanced engagement offered "a structured and comprehensive opportunity

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301 Written evidence from Ulster Farmers' Union ([IWF0024](#))

302 [QQ 58, 59, 61, 64, 66](#)

303 [Q 26](#)

304 Joint written evidence from the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland ([IWF0025](#))

305 Written evidence from Women's Platform ([IWF0009](#))

306 Written evidence from Professor David Phinnemore, Professor Katy Hayward and Dr Lisa Claire Whitten ([IWF0023](#))

for discussion ... to identify problems very early on in the legislative process”, that “represents a relatively privileged position among third states.”<sup>307</sup>

291. Yet the Centre for Cross Border Studies warned that these structures would not be effective “if they are largely employed as a means for the Commission to inform stakeholders of EU policy initiatives. If, on the other hand, stakeholders’ views are seen to contribute to the shaping of relevant EU policies, this will more properly ensure the smooth operation” of the Windsor Framework. They stressed that the same principle should apply to engagement with the UK Government.<sup>308</sup>

292. Lord Bew and Lord Murphy of Torfaen stressed the importance of the participation of the First Minister and deputy First Minister in the deliberations of the Joint Committee as “joint opposites” in a “co-premiership”, supported by specialist official advice as required.<sup>309</sup> The Alliance Party of Northern Ireland called for routine representation of Northern Ireland Ministers and officials in the relevant structures and bodies. They stressed that the UK Government had a responsibility to help ensure that the Northern Ireland Executive and Assembly, and the Executive Office in Brussels, were properly resourced for this work.<sup>310</sup>

293. Dr Andrew McCormick said that the Northern Ireland Executive Office in Brussels “will need to be very active in liaising and understanding what is coming through” in terms of EU legislation, because “once a proposal emerges it will be the result of probably quite a lot of difficult compromise amongst the 27 [Member States]. ... The levels of scrutiny after publication are important, but getting up stream and ahead of it is ... vital.”<sup>311</sup>

294. Glyn Roberts said that issues arising from the Windsor Framework should be part of the external affairs remit of junior Ministers in the Northern Ireland Executive. He called on an incoming Executive to review the operation of the Northern Ireland Executive Office in Brussels, building on the good work that it already does. He also argued that the EU should open an office in Belfast (as well as Edinburgh and Cardiff):

“It would be so much easier for us as local reps on the ground to engage with problems. ... if we had that office open, then we could bring problems to them and we would, I hope, get a quicker solution than going through the Embassy in London, as we do currently, or to Brussels itself. I am not asking for anything that is different to any other part of the UK or a practice that is not there in other devolved areas.”<sup>312</sup>

295. On the other hand, Martin Howe KC expressed concern about the Commission engaging directly with stakeholders in Northern Ireland:

“Given that we have the really quite extraordinary constitutional innovation of laws for part of our country being made by a foreign power, it seems to me that to have direct engagement from a foreign power with our citizens who are affected by those laws is a further extension

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307 Written evidence from Professor Simon Usherwood ([IWF0010](#))

308 Written evidence from Centre for Cross Border Studies ([IWF0004](#))

309 [QQ 15–16](#)

310 Written evidence from the Alliance Party of Northern Ireland ([IWF0019](#))

311 [Q 3](#)

312 [Q 59](#)

of that extraordinary scenario. I regard it as constitutionally extremely concerning.”<sup>313</sup>

### Independent review into the functioning of the Windsor Framework

296. Professor David Phinnemore, Professor Katy Hayward and Dr Lisa Claire Whitten also stressed the importance of reviewing the Windsor Framework’s provisions.<sup>314</sup> In its 2019 *Declaration concerning the operation of the ‘Democratic consent in Northern Ireland’ provision of the Protocol on Ireland/Northern Ireland in Article 18 of the Protocol*, the Government made the following commitment:

“In the event that any vote [in the Northern Ireland Assembly] in favour of the continued application of Articles 5 to 10 of the Protocol, held as part of the democratic consent process or alternative democratic consent process, is passed by a simple majority ... rather than with cross community support, the United Kingdom Government will commission an independent review into the functioning of the Northern Ireland Protocol and the implications of any decision to continue or terminate alignment on social, economic and political life in Northern Ireland.

“The independent review will make recommendations to the Government of the United Kingdom, including with regard to any new arrangements it believes could command cross-community support.

“The independent review will include close consultation with the Northern Ireland political parties, businesses, civil society groups, representative organisations (including of the agricultural sector) and trade unions. It will conclude within two years of the vote”.<sup>315</sup>

297. In its 24 March 2023 Unilateral Declaration in the Withdrawal Agreement Joint Committee on the democratic consent mechanism in Article 18, the Government reaffirmed its commitment to:

“commissioning an independent review in the circumstances set out in its Unilateral Declaration on consent. In any such circumstances, whether following the first exercise of the democratic consent mechanism or thereafter, the United Kingdom commits to bring the recommendations of the review to the Joint Committee, recognising the responsibility of the Joint Committee [under Article 164 of the Withdrawal Agreement] ... to consider any matter of interest relating to an area covered by the Windsor Framework, and to seek appropriate ways and methods of

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313 Q 57

314 Written evidence from Professor David Phinnemore, Professor Katy Hayward and Dr Lisa Claire Whitten (IWF0023)

315 HM Government, *Declaration by Her Majesty’s Government of the United Kingdom of Great Britain and Northern Ireland concerning the operation of the ‘Democratic consent in Northern Ireland’ provision of the Protocol on Ireland/Northern Ireland* (19 October 2019): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/840657/Declaration\\_by\\_Her\\_Majesty\\_s\\_Government\\_of\\_the\\_United\\_Kingdom\\_of\\_Great\\_Britain\\_and\\_Northern\\_Ireland\\_concerning\\_the\\_operation\\_of\\_the\\_Democratic\\_consent\\_in\\_Northern\\_Ireland\\_provision\\_of\\_the\\_Protocol\\_on\\_Ireland\\_Northern\\_Ireland.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840657/Declaration_by_Her_Majesty_s_Government_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_concerning_the_operation_of_the_Democratic_consent_in_Northern_Ireland_provision_of_the_Protocol_on_Ireland_Northern_Ireland.pdf) [accessed 12 July 2023]

preventing problems that might arise in areas covered by the Windsor Framework.”<sup>316</sup>

### Conclusions

298. **Without prejudice to the views regarding the Windsor Framework of individual members of the Sub-Committee, we stress the importance of UK-EU engagement on the Framework’s operation with Northern Ireland stakeholders, including the Executive and Assembly, political parties, business representatives, civic society and community groups. We therefore welcome the UK and EU commitment to enhanced dialogue with each other and with Northern Ireland stakeholders, both through the existing governance mechanisms—the Withdrawal Agreement Joint Committee, Specialised Committee on the Windsor Framework and the Joint Consultative Working Group—and the new mechanisms established under the Windsor Framework—the Enhanced Coordination Mechanism on VAT and excise, the Special Body on Goods, and thematic sub-groups of the Joint Consultative Working Group. We endorse the calls for dedicated sub-groups on agri-food, retail, haulage and the Article 2 provisions on human rights and equalities issues.**
299. **In recognition of Northern Ireland’s unique circumstances, the EU has also set out a number of mechanisms for its own bilateral engagement with Northern Ireland stakeholders. While welcome, such engagement needs to have substance. In particular, Northern Ireland stakeholders must be given a means of expressing views on EU legislation early in the policy-making process, and the EU has an obligation to take this feedback into account. At the same time, the UK Government needs to enhance and formalise its own bilateral dialogue with Northern Ireland stakeholders.**
300. **Northern Ireland stakeholders are frustrated at the continued lack of detail over how such engagement will work in practice. In particular, the structure of UK-EU official-level engagement is significantly more developed than for engagement with Northern Ireland stakeholders. These bodies must facilitate engagement by stakeholders with the UK and the EU jointly, to avoid a repetition of past problems with miscommunication and inconsistent advice. The UK and the EU also need to make the work of these bodies more visible to Northern Ireland stakeholders, the Northern Ireland Assembly and the UK Parliament, with adequate resources in place to support their operation. Above all, dialogue must be focused and structured to avoid a repeat of the ad hoc, haphazard and ‘tick-box’ engagement that stakeholders have complained of in the past.**
301. **Once the power-sharing institutions are re-established, there needs to be full and substantive involvement in these bodies by the First Minister and deputy First Minister, Northern Ireland Executive Ministers and officials, as well as engagement with the Northern**

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316 HM Government, *Unilateral Declarations by the United Kingdom of Great Britain and Northern Ireland and the European Union in the Withdrawal Agreement Joint Committee on the democratic consent mechanism in Article 18* (23 March 2023): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1145713/Unilateral\\_Declarations\\_by\\_the\\_United\\_Kingdom\\_of\\_Great\\_Britain\\_and\\_Northern\\_Ireland\\_and\\_the\\_European\\_Union\\_in\\_the\\_Withdrawal\\_Agreement\\_Joint\\_Committee\\_on\\_Article\\_18.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1145713/Unilateral_Declarations_by_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_and_the_European_Union_in_the_Withdrawal_Agreement_Joint_Committee_on_Article_18.pdf) [accessed 12 July 2023]

**Ireland Assembly. In particular, this must include consultation by the EU at the earliest opportunity in the policy-making process with Northern Ireland Executive Ministers, officials and Members of the Legislative Assembly on proposed EU law potentially applying to Northern Ireland. We also underline the key role of the Northern Ireland Executive Office in Brussels as a conduit for dialogue between the EU and the Northern Ireland institutions.**

302. *We invite the Government to set out how it will ensure that the First Minister and deputy First Minister, and Northern Ireland Executive Ministers and officials, are able to play a substantive role in these bodies, and that the UK and EU take account of their concerns. We also urge the Government to work with the Northern Ireland Executive to ensure that sufficient resources are available to support this important work.*
303. **We welcome the Government’s renewed commitment to commission an independent review into the functioning of the Windsor Framework after a vote by simple majority in the Northern Ireland Assembly under the democratic consent mechanism set out in Article 18. We urge the Government and the EU to ensure that this review provides a meaningful opportunity to address problems that might arise in the operation of the Windsor Framework.**
304. **The Windsor Framework is the latest attempt to manage the implications of Brexit for Northern Ireland. The UK and the EU must ensure that they remain in close and productive dialogue, both with each other and with Northern Ireland stakeholders, maintaining a commitment to address all the issues that arise out of the Windsor Framework, and those issues which have yet to be resolved, not least for the benefit of all the people of Northern Ireland.**

## SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

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### The overall impact of the Windsor Framework

1. In their overall assessment of the Windsor Framework, business, Northern Ireland experts and stakeholders have stressed:
  - The Windsor Framework is an improvement on the Protocol as originally agreed, in particular for large retailers who are able to use the green lane, although some checks on the movement of goods between Great Britain and Northern Ireland remain.
  - An agreement negotiated between the UK and the EU is welcome, and paves the way for improved UK-EU relations.
  - Nevertheless, in important respects, and in particular for the non-retail sector, the Windsor Framework will be more burdensome than the Protocol as it has operated to date with various grace periods and derogations.
  - There was significant concern over the lack of clarity about the Windsor Framework's operation in the weeks after its publication, against the backdrop of tight deadlines for implementation.
  - The Windsor Framework remains politically divisive in terms of its impact on Northern Ireland's relationship with the rest of the UK, Ireland, and the EU.

We address each of these issues in the remainder of this report. (Paragraph 39)

2. Our witnesses have also described the technical and legal complexity of the Windsor Framework, and the multiple documents and legal texts that form part of it. They have also noted the confusion that may arise from the difference in emphasis between the UK and EU in their descriptions of some of the Windsor Framework's provisions. (Paragraph 40)
3. *It is incumbent on the UK and EU together to publish a comprehensive summary of the Windsor Framework's provisions, including the consolidated text of the original Protocol as amended by the Windsor Framework.* (Paragraph 40)

### The movement of goods

4. Business representatives and other stakeholders have stressed that the Windsor Framework's provisions in relation to the movement of goods are an improvement on the Protocol as originally designed. In particular, the green lane mechanism (including the increase in the business turnover threshold to £2 million and the ability of businesses based in Great Britain to participate in the UK Internal Market Scheme for trusted traders) will benefit a range of retail businesses, including larger retailers and some SMEs. (Paragraph 67)
5. The new regime for agri-food retail trade in order to maintain supermarket supply chains, including for chilled meats, has also been welcomed. This has engendered optimism that the EU will be willing to show a flexible approach to the operation of these new mechanisms as practical issues emerge in their operation. (Paragraph 68)
6. However, other retailers not able to meet the green lane's requirements, as well as meat for processing, live poultry, dairy, agri-intermediate goods and



grain for animal consumption, goods for manufacturing, and goods where there is any uncertainty over the end destination, are likely to move via the red lane. Stakeholders also argued that for many businesses the movement of goods is likely to be more burdensome than the Protocol as it has operated to date, with the various grace periods and easements in place.( Paragraph 69)

7. *We invite the Government to respond to these concerns over the limited scope of the green lane, and to set out potential solutions to the problems that businesses have highlighted.* (Paragraph 69)
8. We also note concerns that the ability of retailers based in Great Britain to use the green lane to supply the Northern Ireland market could place Northern Ireland businesses, which still need to comply with EU rules for goods, at a competitive disadvantage in their own market.( Paragraph 70)
9. *We invite the Government to set out how it will address this issue.* (Paragraph 70)
10. Our witnesses consistently called for urgent clarification regarding the operation of the new framework for movement of goods, against the backdrop of the initial new processes both for the Windsor Framework, and the Border Target Operating Model applying from October 2023. On 9 June the Government published further detailed guidance on many of these issues. We will engage with business representatives in the autumn to ascertain to what extent this guidance addresses their concerns.( Paragraph 71)
11. *We invite the Government in its response to this report to summarise the new guidance around the operation of the new framework for movement of goods, and to outline the timetable for further guidance to follow.* (Paragraph 71)
12. Business representatives expressed concern that the Windsor Framework does not address issues with groupage and mixed loads, and that those moving multiple products from multiple consumers may be compelled to use the red lane, even if only a small minority of such products are destined for the EU.( Paragraph 72)
13. *We invite the Government to clarify how the Windsor Framework’s provisions will impact upon groupage and the movement of mixed loads, and what steps are being taken to address the concerns of businesses affected.* (Paragraph 72)
14. Business representatives also drew attention to a number of other outstanding or uncertain issues, including the movement of livestock from Northern Ireland to Great Britain and back, retagging of animals, and the movement of halal and kosher meat, as well as “ritual items” to Northern Ireland. We invite the Government to clarify how each of these issues is being addressed. (Paragraph 73)
15. *We invite the Government to clarify how it is addressing the outstanding or uncertain issues raised by business representatives about the movement of goods.* (Paragraph 73)
16. We endorse the calls from business representatives for the Government to enhance its efforts to inform and educate businesses not only in Northern Ireland, but particularly in Great Britain, regarding the new arrangements for movement of goods between Great Britain and Northern Ireland. (Paragraph 74)

17. *We invite the Government to clarify how it will inform and educate business in Northern Ireland and Great Britain regarding the new arrangements for movement of goods.* (Paragraph 74)
18. Business representatives expressed significant concern about the lack of guidance around labelling requirements as the October 2023 deadline for the first phase of the Retail Movement Scheme approached. While we welcome the publication of guidance on 9 June, the amount of time for businesses to adapt their systems is now limited. We will seek feedback from business representatives in the autumn on their preparations for the new requirements. (Paragraph 85)
19. *We invite the Government in its response to this report to summarise the new guidance around labelling requirements, and to outline the timetable for any further guidance to follow. We also invite the Government to set out how it will support businesses in adapting to these changes.* (Paragraph 85)
20. The Government has stated that its decision to adopt a UK-wide labelling scheme was in part to underpin Northern Ireland's position within the UK. Yet the first phase of the Retail Movement Scheme will be limited in scope to relevant goods moving to Northern Ireland through the green lane. (Paragraph 86)
21. *We invite the Government to set out what assessment it has made of the implications of the staggered introduction of labelling requirements for Northern Ireland's place within the UK internal market. We also invite the Government to provide clarity on the timetable for consultation and introducing legislation on subsequent phases of the Retail Movement Scheme applying across the UK as a whole.* (Paragraph 86)
22. Business representatives are supportive of the solution for Tariff Rate Quotas for certain categories of steel. However, we note their concerns about the impact of UK and EU quotas on movements to Northern Ireland of other categories of steel. We also note their calls for solutions on access to Tariff Rate Quotas for grain imported to Northern Ireland to ensure price competitiveness. While welcoming the EU and UK's commitment to continued dialogue on Tariff Rate Quotas, we stress the need for swift progress to resolving these issues, including through substantive consultation with business representatives. (Paragraph 90)
23. Business representatives have broadly welcomed the Windsor Framework's provisions on parcels, in particular for consumer-to-consumer and business-to-consumer movements, and have expressed optimism that they will help ensure that Great Britain-based firms are willing to supply the Northern Ireland market. While the provisions are less burdensome than the Protocol as originally conceived, they represent an increase in customs processes for business movements compared to the Protocol as it has operated to date, in particular for business-to-business movements where suppliers are not trusted traders. (Paragraph 99)
24. Business representatives also sought further clarity and guidance, as well as an education and communication strategy, ahead of the introduction of the new systems on 30 September 2024. We note the Government's publication of further guidance on 9 June 2023, and we will seek feedback from business representatives in the autumn on the extent to which this addresses their concerns. (Paragraph 100)

25. *We invite the Government in its response to this report to summarise this new guidance on parcels, and to outline the timetable for further guidance to follow. In so doing, we invite the Government to provide clarity on data sets and commodity information requirements, legal liability, and on the operation of the Authorised Carrier Scheme. (Paragraph 100)*
26. The farming and horticultural sectors have welcomed the easements for plants, seeds, machinery and trees as far as they go. However, they also pointed out that the movement from Great Britain to Northern Ireland for planting of a large number of species, including several of key importance to the ecosystem, remains prohibited, and called for the process for approvals to be expedited. We also note concerns that plants and trees will only be available via registered operators such as garden centres, and not via online shopping.( Paragraph 107)
27. *We invite the Government to confirm whether plants and trees will only be available via registered operators, and to set out how it will address concerns that many important species remain prohibited. We also invite the Government to provide an update on the mechanism for removal of the ban on 11 further species by the next planting season, and to set out how the process for such approvals can be expedited. (Paragraph 107)*

### **Human and veterinary medicines, and movement of pets**

28. The pharmaceutical industry has strongly welcomed the Windsor Framework's provisions on human medicines, arguing that they provide sustainable solutions to the problems with medicine supply to Northern Ireland. Industry has welcomed in particular the approval and licensing of products on a UK-wide basis by the Medicines and Healthcare products Regulatory Agency (MHRA), provision for the same packaging and labelling requirements across the UK, and the disapplication of the Falsified Medicines Directive in Northern Ireland. Witnesses stressed the need for further information on the operational requirements of the new arrangements. We welcome the further clarification as set out in the Government's announcement of 9 June, and look forward to further clarification in the months ahead.( Paragraph 116)
29. *We invite the Government to intensify its engagement with stakeholders as the pharmaceutical industry prepares for the commencement of the new measures on 1 January 2025. We also invite the Government to respond to the calls from industry representatives for clarity over labelling requirements, safety features, the supply of medical devices and concerns that Northern Ireland may get slower access to cutting-edge products than Ireland. (Paragraph 116)*
30. While welcoming the extension of the grace periods for veterinary medicines until the end of 2025, the veterinary, farming and agri-food sectors have expressed serious concern that a mutually agreed solution has yet to be reached. The Commission has stated that the grace period is designed to provide the sector with "ample time to adapt". Yet industry representatives have warned that, without a permanent solution, the supply of over 50% of veterinary medicines to Northern Ireland may be discontinued, posing a risk both to animal and human health, and to agri-food supply chains. (Paragraph 127)
31. The issue of veterinary medicines needs to be resolved now rather than in 2025 when the cliff-edge is looming.(Paragraph 128)

32. *The UK and the EU must engage urgently together with industry stakeholders to agree a sustainable and mutually agreed solution that protects both the supply of veterinary medicines from the UK and Northern Ireland's access to the EU Single Market for goods, at the same time protecting complex supply chains between Northern Ireland, Great Britain and Ireland.*(Paragraph 128)
33. We will scrutinise the supply of veterinary medicines from the UK and Northern Ireland's access to the EU Single Market for goods further in the autumn. (Paragraph 129)
34. *We invite the Government's view on the various proposed solutions put forward by industry stakeholders, including a UK-EU sanitary and phytosanitary (SPS) agreement, and urge the Government to intensify its engagement with the EU and with industry in order to identify a sustainable solution as a matter of urgency.* (Paragraph 129)
35. Stakeholders have welcomed the Windsor Framework's provisions on movement of pets as a proportionate approach compared to the Protocol as originally agreed. There will be no requirements on pets moving from Northern Ireland to Great Britain, although those moving pets from Great Britain to Northern Ireland will be required to microchip their pets and obtain a travel document valid for the lifetime of the pet.( Paragraph 133)
36. *We urge the Government to work with travel companies to ensure that pet owners are aware of the new requirements.* (Paragraph 133)

#### **VAT, excise and State aid**

37. Business representatives and experts have welcomed the Windsor Framework's provisions on VAT as a pragmatic easement of the original provisions of the Protocol, in particular in relation to the application of UK VAT reliefs for energy-saving materials to goods that are supplied and installed in immovable property in Northern Ireland, and the VAT treatment of second-hand vehicles in Northern Ireland. Nevertheless, potential flexibilities already existed under the original Protocol and following changes to the EU Principal VAT Directive. Furthermore, EU VAT rules for goods continue to apply in Northern Ireland as a default. (Paragraph 143)
38. Business representatives have welcomed the ability to apply in Northern Ireland the new excise duty on alcohol in Great Britain, although this only applies to bars and restaurants. We also note that Northern Ireland will remain the only part of the UK not to offer duty-free on flights to and from the EU. (Paragraph 144)
39. Stakeholders have welcomed the new Enhanced Coordination Mechanism on VAT and excise as an important vehicle for reviewing future UK and EU legislation to ensure that any adverse consequences for Northern Ireland (including regulatory divergence) are taken into account before implementation. Businesses have also welcomed the potential for further flexibilities to be agreed through this dialogue, subject to the agreement of the EU. We urge the UK and EU to ensure that the new body is sufficiently resourced and has access to necessary expertise (including from Northern Ireland) to ensure it delivers its objectives. (Paragraph 145)
40. *We urge the UK and EU to ensure that the the Enhanced Coordination Mechanism on VAT and excise is sufficiently resourced and has access to necessary expertise (including from Northern Ireland) to ensure it delivers its objectives. We also invite*

*the Government to provide an update on its dialogue with the EU on the development of a list of goods not subject to EU law. (Paragraph 145)*

41. While the Government has not achieved its negotiating aim of removal of Article 10 of the Windsor Framework in its entirety, it has secured the EU's agreement to an Interpretative Declaration seeking to limit the scope of the 'reach-back' of Article 10 into State aid provisions affecting the whole of the UK. The UK and the EU have since endorsed the Declaration in published guidance. However, it is uncertain what impact the Declaration will have on the Court of Justice of the European Union's interpretation of Article 10, and legal experts have stressed that the issue may ultimately be tested in the courts. (Paragraph 154)
42. The Joint Interpretative Declaration on State aid does not deal with UK-wide measures that have a "material" or "real foreseeable" effect on trade between Northern Ireland and the EU. Experts have warned of the legal uncertainty and chilling effect on investment that may arise from the requirement to notify the Commission of such measures, in particular given that a subsidy can be challenged by the Commission for a number of years after it is notified. It therefore remains to be seen how robust the UK Government and Commission's interpretation of the Windsor Framework's provisions on State aid will prove to be in practice. (Paragraph 155)
43. *We invite the Government to respond to the concerns that our witnesses have raised over the legal uncertainties around state aid. (Paragraph 155)*

#### **The UK internal market, the EU Single Market for goods, regulatory divergence and the application of EU law**

44. Given the primary economic importance of purchases from and sales of goods to Great Britain for Northern Ireland's economy, we stress the imperative of ensuring that Northern Ireland is an integral part of the UK internal market. At the same time, we acknowledge the importance of access to the EU Single Market for goods for many sectors of the Northern Ireland economy, in particular the agri-food and manufacturing industries, which have complex supply chains across the island of Ireland. (Paragraph 171)
45. The Government has committed to providing Northern Ireland with a "unique set of opportunities" in terms of access to both markets. This is a laudable aim, and time will tell if the Windsor Framework delivers this in practice. In the meantime, the Government should explain what this means in practice, and how it will be delivered. Furthermore, in order to maximise these opportunities, the Government and the EU must redouble their efforts to educate businesses and stakeholders in Great Britain and in the EU about the unique benefits of Northern Ireland's dual market access, and ways of addressing impediments to moving goods from Great Britain to Northern Ireland. (Paragraph 172)
46. *In the meantime, the Government should explain what this means in practice, and how it will be delivered. Furthermore, in order to maximise these opportunities, the Government and the EU must redouble their efforts to educate businesses and stakeholders in Great Britain and in the EU about the unique benefits of Northern Ireland's dual market access, and ways of addressing impediments to moving goods from Great Britain to Northern Ireland. (Paragraph 172)*

47. The new Office for the Internal Market also has a key role to play in monitoring the impact of the Windsor Framework on Northern Ireland's place within the UK internal market.(Paragraph 172)
48. We again note concerns that the Windsor Framework could undercut the competitiveness of Northern Ireland businesses, which are required to ensure compliance with EU rules for goods, compared to competitors in Great Britain able to access the Northern Ireland market via the green lane. (Paragraph 173)
49. *We invite the Government urgently to clarify what steps it is taking to address this issue.* (Paragraph 173)
50. *We invite the Government to clarify how, in the context of goods moving from Northern Ireland to Great Britain, it will distinguish between Northern Ireland goods entitled to unfettered access to the UK internal market and those moving from the EU (including Ireland) to Great Britain via Northern Ireland under the Border Target Operating Model.* (Paragraph 174)
51. Business representatives stress that regulatory divergence, whether between Great Britain and Northern Ireland, or between Northern Ireland and Ireland, remains their number one concern. There is an underlying fear that Northern Ireland will find itself in a “no-man’s land” between Great Britain and the EU (including Ireland), placing the competitiveness of Northern Ireland firms and their complex supply chains in jeopardy.( Paragraph 183)
52. *We invite the Government to clarify whether it is seeking actively to diverge from the EU, and if so, what assessment it has made of the practical impact of this on Northern Ireland, and on the issues raised in this report.*(Paragraph 183)
53. While we welcome the mechanisms that have been established to monitor such divergence, including (within the UK) the Office for the Internal Market and (between the UK and the EU) the Special Body on Goods, it remains to be seen how effective these bodies will be in practice. (Paragraph 184)
54. *In order to aid their work, we urge the Government and the EU to undertake substantive assessments for all planned legislation of the impact of regulatory divergence on Northern Ireland. We also renew our call, made repeatedly since March 2022 with the support of Northern Ireland stakeholders, for the Government to create and maintain an up-to-date record of regulatory divergence and its impact on Northern Ireland.* (Paragraph 184)
55. The Government’s reference to the “disapplication of 1,700 pages of EU law from Northern Ireland” under the Windsor Framework has caused uncertainty and confusion. While a small number of EU rules have been disapplied in Northern Ireland in their entirety, the main basis for the Government’s statistic appears to be the 65 EU acts listed in Annex 1 of the EU Regulation on rules relating to movements of retail goods moving through the green lane published as part of the Windsor Framework package. While these laws are disapplied for the movement of goods from Great Britain to Northern Ireland via the green lane, they will apply for movement of goods via the red lane, and for all goods produced in Northern Ireland itself.( Paragraph 196)
56. *We urge the Government to set out clearly the basis for its reference to the “disapplication of 1,700 pages of EU law from Northern Ireland”.* (Paragraph 196)

57. More generally, the continued application of EU law in Northern Ireland remains politically contentious. For many in the unionist community in particular, and others, it raises constitutional issues of sovereignty in terms of the application of areas of EU law to Northern Ireland, but not to the rest of the UK. On the other hand, for many in the nationalist community in particular, and others, the continued application to Northern Ireland of areas of EU law is necessary to ensure Northern Ireland's access to the EU Single Market for goods and the avoidance of a land border on the island of Ireland. We acknowledge the difficulty of reconciling these two positions. In view of these political tensions, the obligation on the UK and the EU is for them both to be fully transparent with Northern Ireland stakeholders over the consequences of what they have agreed under the Windsor Framework. (Paragraph 197)

### **The democratic deficit, the Stormont Brake and the Belfast/Good Friday Agreement**

58. We have previously drawn attention to the democratic deficit under the original Protocol, whereby areas of EU law applied to Northern Ireland without its prior consent. There are a range of views on the extent to which the Windsor Framework, including the Stormont Brake and 'applicability motion' mechanisms, addresses this deficit. (Paragraph 244)
59. Some witnesses welcomed the Stormont Brake as an innovation within the context of EU law, and viewed it as a significant expansion of the role of the Northern Ireland Assembly in the EU legislative process, and an expansion in its role to areas previously reserved for Westminster. They also stressed that it created an incentive for early engagement by the EU and UK with Northern Ireland stakeholders, in order to identify and address issues, and prevent the Stormont Brake needing to be pulled. (Paragraph 245)
60. At the same time, several witnesses called for clarity on the operation of the Stormont Brake. (Paragraph 246)
61. *We invite the Government to clarify the process by which it would decide whether the tests have been met for the use of the Brake.* (Paragraph 246)
62. Other witnesses stressed that the Stormont Brake has a limited scope and applies only to new, amending or replacement EU laws, and not those that currently apply to Northern Ireland. Further, it applies only to a sub-set of rules within the scope of the original Protocol. It also means that the Assembly can only reject laws within its scope, and cannot make those laws for itself. (Paragraph 247)
63. *We invite the Government to clarify whether EU tertiary legislation—delegated and implementing acts—are within the scope of the Stormont Brake.*(Paragraph 247)
64. Some witnesses also argued that the conditions which must exist for the Stormont Brake to be pulled set a high bar for its use. Several stressed that it is the UK Government, not the Northern Ireland Assembly, which retains the power to exercise a veto, and that a notification from Members of the Legislative Assembly (MLAs) can be set aside by the Secretary of State for Northern Ireland in a number of circumstances. Furthermore, any exercise of a veto can result in 'remedial action' by the EU. (Paragraph 248)
65. *We invite the Government's response and clarification on how the Stormont Brake will be pulled, in particular setting out what factors it will take into account*

*in deciding whether to exercise its veto, including how to reflect the views of the Northern Ireland Assembly. (Paragraph 248)*

66. We also note witnesses' concern about the potential political and economic ramifications of the Stormont Brake. Some feared that it could destabilise the political institutions. There were also warnings that this instability could create economic uncertainty for businesses and investors, as well as potentially provoking remedial action by the EU, with potential implications for Northern Ireland's access to the Single Market for goods.(Paragraph 249)
67. *We invite the Government's response and clarification on the political and economic implications of the Stormont Brake. (Paragraph 249)*
68. We note that many of the points raised about the Stormont Brake also apply to the cross-community 'applicability motion' mechanism introduced by the Windsor Framework (Democratic Scrutiny) Regulations 2023. (Paragraph 250)
69. The new Northern Ireland Assembly Windsor Framework Scrutiny Committee will be an important means to facilitate the Assembly's scrutiny of the Windsor Framework. Witnesses raised important questions about the role of the Committee in relation to the pulling of the Stormont Brake, and the public visibility of its work. Several witnesses also emphasised the resource implications of the Stormont Brake mechanism on the Northern Ireland Assembly, Executive and Civil Service.( Paragraph 251)
70. *We invite the Government to set out how it will support the Northern Ireland Assembly Windsor Framework Scrutiny Committee, and the Assembly, Executive and Northern Ireland Civil Service more generally, in undertaking these functions, including ensuring they have sufficient resources to do so. (Paragraph 251)*
71. As the continued suspension of the power-sharing institutions demonstrates, political tensions in Northern Ireland over Brexit and the Protocol remain acute. We acknowledge the importance and the difficulty of resolving these issues to the satisfaction of all communities in Northern Ireland. (Paragraph 270)

### **The role of the Court of Justice of the European Union**

72. Aside from the new, specific provisions of the Stormont Brake, which we addressed in Chapter 7, there has been no substantive change to the Court of Justice of the European Union's role as the final arbiter of EU law falling within the scope of the Windsor Framework. Nevertheless, in the context of the CJEU's jurisdiction to hear infringement proceedings, we note that, to avoid recourse to the Court in disputes between the Parties, the UK and the EU have committed to using the dialogue mechanisms under the Withdrawal Agreement and Windsor Framework to arrive at mutually satisfactory resolutions. It remains to be seen how frequently the CJEU will be called upon in its role as the sole arbiter of EU law in the context of the Windsor Framework, whether in disputes between the Parties or in legal proceedings brought by individuals. (Paragraph 277)

### **Dialogue and engagement**

73. Without prejudice to the views regarding the Windsor Framework of individual members of the Sub-Committee, we stress the importance of UK-EU engagement on the Framework's operation with Northern Ireland



stakeholders, including the Executive and Assembly, political parties, business representatives, civic society and community groups. We therefore welcome the UK and EU commitment to enhanced dialogue with each other and with Northern Ireland stakeholders, both through the existing governance mechanisms—the Withdrawal Agreement Joint Committee, Specialised Committee on the Windsor Framework and the Joint Consultative Working Group—and the new mechanisms established under the Windsor Framework—the Enhanced Coordination Mechanism on VAT and excise, the Special Body on Goods, and thematic sub-groups of the Joint Consultative Working Group. We endorse the calls for dedicated sub-groups on agri-food, retail, haulage and the Article 2 provisions on human rights and equalities issues. (Paragraph 298)

74. In recognition of Northern Ireland’s unique circumstances, the EU has also set out a number of mechanisms for its own bilateral engagement with Northern Ireland stakeholders. While welcome, such engagement needs to have substance. In particular, Northern Ireland stakeholders must be given a means of expressing views on EU legislation early in the policy-making process, and the EU has an obligation to take this feedback into account. At the same time, the UK Government needs to enhance and formalise its own bilateral dialogue with Northern Ireland stakeholders. (Paragraph 299)
75. Northern Ireland stakeholders are frustrated at the continued lack of detail over how such engagement will work in practice. In particular, the structure of UK-EU official-level engagement is significantly more developed than for engagement with Northern Ireland stakeholders. These bodies must facilitate engagement by stakeholders with the UK and the EU jointly, to avoid a repetition of past problems with miscommunication and inconsistent advice. The UK and the EU also need to make the work of these bodies more visible to Northern Ireland stakeholders, the Northern Ireland Assembly and the UK Parliament, with adequate resources in place to support their operation. Above all, dialogue must be focused and structured to avoid a repeat of the ad hoc, haphazard and ‘tick-box’ engagement that stakeholders have complained of in the past. (Paragraph 300)
76. Once the power-sharing institutions are re-established, there needs to be full and substantive involvement in these bodies by the First Minister and deputy First Minister, Northern Ireland Executive Ministers and officials, as well as engagement with the Northern Ireland Assembly. In particular, this must include consultation by the EU at the earliest opportunity in the policy-making process with Northern Ireland Executive Ministers, officials and Members of the Legislative Assembly on proposed EU law potentially applying to Northern Ireland. We also underline the key role of the Northern Ireland Executive Office in Brussels as a conduit for dialogue between the EU and the Northern Ireland institutions. (Paragraph 301)
77. *We invite the Government to set out how it will ensure that the First Minister and deputy First Minister, and Northern Ireland Executive Ministers and officials, are able to play a substantive role in the new bodies established under the Windsor Framework, and that the UK and EU take account of their concerns. We also urge the Government to work with the Northern Ireland Executive to ensure that sufficient resources are available to support this important work.* (Paragraph 302)
78. We welcome the Government’s renewed commitment to commission an independent review into the functioning of the Windsor Framework after

a vote by simple majority in the Northern Ireland Assembly under the democratic consent mechanism set out in Article 18.( Paragraph 303)

79. *We urge the Government and the EU to ensure that the independent review provides a meaningful opportunity to address problems that might arise in the operation of the Windsor Framework.* (Paragraph 303)
80. The Windsor Framework is the latest attempt to manage the implications of Brexit for Northern Ireland. The UK and the EU must ensure that they remain in close and productive dialogue, both with each other and with Northern Ireland stakeholders, maintaining a commitment to address all the issues that arise out of the Windsor Framework, and those issues which have yet to be resolved, not least for the benefit of all the people of Northern Ireland. (Paragraph 304)

## APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

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### Members

Lord Dodds of Duncairn  
 Lord Empey  
 Lord Godson  
 Lord Hain  
 Lord Hannan of Kingsclere  
 Lord Jay of Ewelme (Chair)  
 Baroness O’Loan  
 Baroness Ritchie of Downpatrick  
 Lord Thomas of Gresford

### Declarations of interest

Lord Dodds of Duncairn  
*No relevant interests to declare*

Lord Empey  
*Dr Esmond Birnie was my special adviser when I was Minister at the Department of Employment and learning in Belfast 2007–2010*  
*Membership of Committee A (sovereign matters) of the British-Irish Parliamentary Assembly*

Lord Godson  
*Director, Policy Exchange*  
*Membership of Committee A (sovereign matters) of the British-Irish Parliamentary Assembly*

Lord Hain  
*No relevant interests to declare*

Lord Hannan of Kingsclere  
*No relevant interests to declare*

Lord Jay of Ewelme (Chair)  
*Chairman, Advisory Council, European Policy Forum*  
*Member, European and International Analysts Group*

Baroness O’Loan  
*No relevant interests to declare*

Baroness Ritchie of Downpatrick  
*Honorary Professor of Practice, Department of Engagement, Queen’s University Belfast*  
*Member of the Advisory Board for PeopleHawk—online digital platform for human resources in Belfast with international connections*  
*Member of the Board, Co-operation Ireland (non-remunerated)*  
*Membership of Committee C (Economic Affairs) of the British-Irish Parliamentary Assembly*

Lord Thomas of Gresford  
*No relevant interests to declare*

The following Members of the European Affairs Committee attended the meeting at which the report was approved:

Baroness Anelay of St Johns  
 Baroness Blackstone

Lord Hannay of Chiswick  
Lord Jay of Ewelme  
Lord Lamont of Lerwick  
Baroness Ludford  
Baroness Nicholson of Winterbourne  
Lord Ricketts (Chair)  
Baroness Scott of Needham Market  
Viscount Trenchard  
Lord Wood of Anfield

During consideration of the report the following Member declared an interest:

Lord Ricketts

*Non-executive Director, Group Engie*

*Non-executive Director, Getlink Group (operator of the Channel Tunnel and of Eurotunnel train services)*

*Chairman, Franco-British Council*

*Vice Chairman, Royal United Services Institute*

## APPENDIX 2: LIST OF WITNESSES

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Evidence is published online at <https://committees.parliament.uk/work/7372/windsor-framework/publications/> and available for inspection at the Parliamentary Archives (0207 219 3074).

Evidence received by the Committee is listed in chronological order of oral evidence session and in alphabetical order. The witness marked with \*\* gave both oral and written evidence. Those marked with \* gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

### Oral evidence in chronological order

*	Dr Andrew McCormick, former Director General of International Relations for the Northern Ireland Executive	<a href="#">QQ 1–10</a>
*	Jess Sargeant, Associate Director, Institute for Government (IfG)	<a href="#">QQ 1–10</a>
*	Anton Spisak, Head of Political Leadership, Tony Blair Institute for Global Change	<a href="#">QQ 1–10</a>
*	James Webber, Partner, Shearman and Sterling	<a href="#">QQ 1–10</a>
*	Lord Bew	<a href="#">QQ 11–24</a>
*	Lord Murphy of Torfaen	<a href="#">QQ 11–24</a>
*	Stuart Anderson, Head of Public Affairs, Northern Ireland Chamber of Commerce and Industry	<a href="#">QQ 25–34</a>
**	David Brown, President, Ulster Farmers' Union	<a href="#">QQ 25–34</a>
*	Mark Tait, Director, Target Transport	<a href="#">QQ 25–34</a>
**	Sarah Hards, Sales Director, AM Logistics	<a href="#">QQ 35–46</a>
*	Roger Pollen, Head of FSB Northern Ireland	<a href="#">QQ 35–46</a>
*	Peter Summerton, Managing Director, McCulla Ireland	<a href="#">QQ 35–46</a>
*	Martin Howe KC, 8 New Square	<a href="#">QQ 47–57</a>
*	Dr Anna Jerzewska, Director, Trade and Borders	<a href="#">QQ 47–57</a>
**	Dr Lisa Claire Whitten, Research Fellow, Post Brexit Governance NI, Queen's University Belfast	<a href="#">QQ 47–57</a>
*	Declan Gormley, Managing Director, Brookvent Ltd	<a href="#">QQ 58–71</a>
*	Andrew Opie, Director of Food and Sustainability, British Retail Consortium	<a href="#">QQ 58–71</a>
*	Glyn Roberts, Chief Executive, Retail NI	<a href="#">QQ 58–71</a>
**	Rt Hon James Cleverly MP, Secretary of State for Foreign, Commonwealth and Development Affairs, Foreign, Commonwealth and Development Office (FCDO)	<a href="#">QQ 72–83</a>

- \* Mark Davies, Director of the Windsor Framework Task Force, Foreign, Commonwealth and Development Office [QQ 72–83](#)
- \* Peter Wilson, Director-General for Europe Group, Foreign, Commonwealth and Development Office [QQ 72–83](#)

### Alphabetical list of all witnesses

- ADS Group [IWF0014](#)
- Alliance Healthcare (Distribution) Ltd [IWF0031](#)
- Alliance Party of Northern Ireland [IWF0019](#)
- \*\* AM Logistics ([QQ 35–46](#)) [IWF0006](#)
- \* Stuart Anderson, Head of Public Affairs, Northern Ireland Chamber of Commerce and Industry ([QQ 25–34](#))
- Anonymous [IWF0007](#)
- \* Lord Bew ([QQ 11–24](#))
- Dr Esmond Birnie, Senior Economist, Ulster University [IWF0037](#)
- British Medical Association Northern Ireland [IWF0016](#)
- British Poultry Council [IWF0034](#)
- British Veterinary Association [IWF0027](#)
- \*\* David Brown, President, Ulster Farmers’ Union ([QQ 25–34](#)) [IWF0024](#)
- Centre for Cross Border Studies [IWF0004](#)
- Chartered Accountants Ireland [IWF0032](#)
- Co-operation Ireland [IWF0015](#)
- Dairy Council for Northern Ireland [IWF0020](#)
- \* Mark Davies, Director of the Windsor Framework Task Force, Foreign, Commonwealth and Development Office ([QQ 72–83](#))
- Equality Commission for Northern Ireland (ECNI) and Northern Ireland Human Rights Commission (NIHRC) [IWF0025](#)
- Ethical Medicines Industry Group (EMIG) [IWF0018](#)
- \* Declan Gormley, Managing Director, Brookvent Ltd ([QQ 58–71](#))
- \*\* Sarah Hards, Sales Director, AM Logistics([QQ 35–46](#)) [IWF0006](#)
- Professor Katy Hayward, Queens University Belfast [IWF0003](#)
- Healthcare Distribution Association UK [IWF0029](#)
- \*\* HM Government - Rt Hon James Cleverly MP ([QQ 72–83](#)) [IWF0042](#)  
[IWF0043](#)

- ★ Martin Howe KC, 8 New Square ([QQ 47–57](#))  
Ibec [IWF0036](#)  
Institute of Irish Studies, University of Liverpool [IWF0001](#)
- ★ Dr Anna Jerzewska, Director, Trade and Borders ([QQ 47–57](#))  
Lakeland Dairies Co-operative Society Limited [IWF0035](#)
- ★ Dr Andrew McCormick, former Director General of International Relations for the Northern Ireland Executive ([QQ 1–10](#))  
Dr Cillian McGrattan, Ulster University [IWF0002](#)  
Dr Billy Melo Araujo, Dr Viviane Gravey and Dr Lisa Claire Whitten, Queens University Belfast [IWF0022](#)
- ★ Lord Murphy of Torfaen ([QQ 11–24](#))  
National Farmers’ Union [IWF0039](#)  
National Pharmacy Association [IWF0021](#)  
NHS Confederation [IWF0011](#)  
National Office of Animal Health (NOAH) [IWF0026](#)  
Northern Ireland Business Brexit Working Group (NIBBWG) [IWF0041](#)  
Nuffield Trust and Health and International Relations Monitor [IWF0028](#)
- ★ Andrew Opie, Director of Food and Sustainability, British Retail Consortium ([QQ 58–71](#))  
PAGB, the consumer healthcare association [IWF0012](#)  
George Peretz KC, Monckton Chambers [IWF0013](#)  
Professor David Phinnemore, Professor Katy Hayward and Dr Lisa Claire Whitten, Queen’s University Belfast [IWF0023](#)
- ★ Roger Pollen, Head of FSB Northern Ireland ([QQ 35–46](#))
- ★ Glyn Roberts, Chief Executive, Retail NI ([QQ 58–71](#))  
Royal College of Podiatry [IWF0017](#)  
Royal Yachting Association [IWF0008](#)
- ★ Jess Sargeant, Associate Director, Institute for Government (IfG) ([QQ 1–10](#))
- ★ Anton Spisak, Head of Political Leadership, Tony Blair Institute for Global Change ([QQ 1–10](#))  
Mr Eddie Spence [IWF0005](#)
- ★ Peter Summerton, McCulla Ireland ([QQ 35–46](#))
- ★ Mark Tait, Director, Target Transport ([QQ 25–34](#))  
Teva UK Limited [IWF0033](#)

	Society of Motor Manufacturers and Traders (SMMT)	<a href="#"><u>IWF0030</u></a>
	Traditional Unionist Voice (TUV)	<a href="#"><u>IWF0038</u></a>
**	Ulster Farmers' Union (UFU) ( <a href="#"><u>QQ 25-34</u></a> )	<a href="#"><u>IWF0024</u></a>
	Professor Simon Usherwood, Professor of Politics and International Relations, The Open University	<a href="#"><u>IWF0010</u></a>
	Warrenpoint Port and Seatruck	<a href="#"><u>IWF0040</u></a>
*	James Webber, Partner, Shearman and Sterling ( <a href="#"><u>QQ 1-10</u></a> )	
**	Dr Lisa Claire Whitten, Research Fellow, Queens University Belfast ( <a href="#"><u>QQ 47-57</u></a> )	<a href="#"><u>IWF0022</u></a> <a href="#"><u>IWF0023</u></a>
*	Peter Wilson, Director-General for Europe Group, Foreign, Commonwealth and Development Office ( <a href="#"><u>QQ 72-83</u></a> )	
	Women's Platform	<a href="#"><u>IWF0009</u></a>



## APPENDIX 3: CALL FOR EVIDENCE

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The House of Lords European Affairs Sub-Committee on the Protocol on Ireland/Northern Ireland was appointed in April 2021, to consider all matters related to the Protocol, including scrutinising EU legislation applying to Northern Ireland under the Protocol, the Protocol’s overall socio-economic and political impact on Northern Ireland, and to engage in inter-parliamentary dialogue, notably with the Northern Ireland Assembly. The Committee is undertaking an inquiry into the Windsor Framework announced by the UK and the EU on 27 February 2023. The Committee will begin taking oral evidence in March, and also welcomes written submissions via this Call for Evidence.

The Committee is happy to receive submissions on any issues related to the subject of the inquiry, but would particularly welcome responses to the questions listed below. You do not need to answer every question.

In so doing, we ask that contributors do not comment on any relevant ongoing legal proceedings.

The deadline for submissions is 4pm on Tuesday 2 May 2023.

Diversity comes in many forms, and hearing from a range of different perspectives means that Committees are better informed and can more effectively scrutinise public policy and legislation. Committees can undertake their role most effectively when they hear from a wide range of individuals, sectors or groups in society affected by a particular policy or piece of legislation. We encourage anyone with experience or expertise of the issues under investigation to share their views with the committee, with the full knowledge that their views have value and are welcome.

### Questions

#### *Overview*

- (1) What is your overall assessment of the Windsor Framework? How far does it go to resolve the problems that have arisen with the Protocol? Does it leave any issues unresolved?
- (2) How would you assess the Windsor Framework against the UK and EU’s joint commitment to protect the Belfast/Good Friday Agreement, “including its subsequent implementation agreements and arrangements, in all its dimensions and in all its strands”?
- (3) To what extent will the Windsor Framework protect both “Northern Ireland’s integral place in the United Kingdom’s internal market” and its “unique access” to the EU Single Market?
- (4) How significant is the difference of emphasis in the UK and EU publications accompanying the Windsor Framework? Are there any factual inconsistencies in their description of the agreement?

#### *Customs procedures and the movement of goods*

- (5) What is your assessment of the Windsor Framework’s provisions in relation to customs procedures and the movement of goods between Great Britain and Northern Ireland, including the arrangements for

‘green’ and ‘red’ lanes, an enhanced Trusted Trader Scheme, handling of Tariff Rate Quotas and the system of commercial data-sharing?

### *Agri-food*

- (6) How would you assess the new framework for agri-food retail trade into Northern Ireland agreed as part of the Windsor Framework? Does it go far enough in mitigating the issues that have been raised in relation to the arrangements for agri-food trade under the Protocol?

### *Parcels*

- (7) What is your response to the Framework’s arrangements concerning parcel deliveries between Northern Ireland and the EU and UK?

### *VAT and excise*

- (8) What is your assessment of the Windsor Framework’s proposals on VAT and excise, including the new UK-EU Enhanced Cooperation Mechanism, and the commitment to explore establishing a list of goods not subject to EU VAT rules?

### *Medicines*

- (9) What is your assessment of the Windsor Framework’s provisions on the supply of human medicines to Northern Ireland? Do they deal sufficiently with the issues previously raised by industry in relation to the Protocol?

### *Plants, seeds, machinery and trees*

- (10) Do the proposals on plants, seeds, machinery and trees resolve the problems encountered under the Protocol?

### *Subsidy control/State aid*

- (11) What is your assessment of the UK-EU Joint Declaration on the application of Article 10(1) of the Windsor Framework? What is the legal status of this document, and what impact will it have in practice?

### *Movement of pets*

- (12) What is your assessment of the proposals on pets, including a pet travel document and owner declaration for pets moving from Great Britain to Northern Ireland, and microchip identification for pets moving from Northern Ireland to Great Britain and back?

### *Veterinary medicines*

- (13) In the context of the Framework, how would you assess the current situation with regard to veterinary medicines? What steps need to be taken to agree a long-term solution before the expiry of the grace period at the end of 2025?

### *Regulatory divergence*

- (14) What is the significance of the Windsor Framework for regulatory divergence a) East-West, between Northern Ireland and Great Britain and b) North-South, on the island of Ireland? What is your assessment of the mechanisms to manage divergence, including the new Special

Goods Body and the role of the Office of the Internal Market? Should a record be kept of such divergence, and if so, by who?

*The application of EU rules in Northern Ireland*

- (15) In the context of the Government's reference to the removal of 1,700 pages of EU law, what is your assessment of the Windsor Framework's impact on the scale of the application of EU law to Northern Ireland? What are the political, constitutional and economic implications of this?

*The democratic deficit and the 'Stormont Brake'*

- (16) What is your assessment of the proposed Stormont Brake and the conditions for its use, including that an EU act "would have a significant impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist"? To what extent will this address the democratic deficit under the Protocol? What practical, political and legal factors need to be borne in mind in terms of its use and operation, including the Government's commitment to bring forward legislation to give effect to the Stormont Brake, and the EU's ability to take "appropriate remedial measures" in response to a UK veto?

*New structures for UK-EU cooperation*

- (17) How would you assess the Framework's enhanced mechanisms for UK-EU cooperation, including the Special Body on Goods, the Enhanced Coordination Mechanism on VAT and excise, sub-groups to the Joint Consultative Working Group?

*Engagement with Northern Ireland stakeholders*

- (18) What is your assessment of the Commission's proposals for enhanced engagement with Northern Ireland stakeholders, including dedicated annual presentations, information sessions, workshops, and mechanisms for engagement with public consultations and impact assessments?
- (19) What steps should be taken by the EU to inform and consult Northern Ireland Executive Ministers and Assembly members on forthcoming legislative proposals applying to Northern Ireland?

*The governance of the Framework, including arbitration and the role of the CJEU*

- (20) What is your assessment of the governance of the Framework, including the role of the CJEU and the Withdrawal Agreement's mechanism for arbitration? What change, if any, will be made to the CJEU's role under the Framework?

*Safeguards*

- (21) What is your assessment of the various safeguard and market surveillance mechanisms designed to protect the EU Single Market? What impact will these have in practice?

## APPENDIX 4: NOTE OF VIRTUAL SEMINAR ON THE DEMOCRATIC DEFICIT IN RELATION TO THE PROTOCOL ON IRELAND/NORTHERN IRELAND, 1 MARCH 2023

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1. At its meeting on Wednesday 1 March, the House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland held a virtual seminar on the democratic deficit in relation to the Protocol on Ireland/Northern Ireland. The seminar included discussion of the Windsor Framework announced by the UK and EU on 27 February, including its proposals for a ‘Stormont Brake’ and mechanisms to enhance engagement with Northern Ireland stakeholders.
2. The participants in the seminar were as follows:
  - Stuart Anderson, Head of Public Affairs, Northern Ireland Chamber of Commerce and Industry/Northern Ireland Business Brexit Working Group
  - Professor Catherine Barnard, Professor of European & Employment Law University of Cambridge
  - Professor Vernon Bogdanor, Research Professor at the Centre for British Politics and Government, King’s College London
  - Dr Maire Braniff, Senior Lecturer, Ulster University
  - Roderick Crawford, Senior Research Fellow, Policy Exchange
  - Professor Federico Fabbrini, Principal, Brexit Institute & Director, Law Research Centre, Dublin City University (DCU)
  - Dr Graham Gudgin, Chief Economic Adviser at Policy Exchange; and Honorary Research Associate, Centre for Business Research, University of Cambridge
  - Mary Madden, former Northern Ireland Office official
  - Dr Sylvia de Mars, Senior Lecturer in Law, Newcastle University
  - Professor Duncan Morrow, Lecturer in Politics, Ulster University
  - Dr Mary C Murphy, Senior Lecturer in Politics, University College Cork
  - Professor Rory O’Connell, Research Director for Law, Ulster University
  - Professor David Phinnemore, Professor of European Politics, Queen’s University Belfast
  - Thomas Sharpe KC, Barrister, One Essex Court
  - Dr Anthony Soares, Director, Centre for Cross Border Studies
  - Peter Summerton, Managing Director, McCulla Ireland
3. A note of the discussion follows.

**Lord Jay of Ewelme:** What is your initial assessment of the Windsor Framework and to what extent will it resolve the democratic deficit under the Protocol on Ireland/Northern Ireland?

**Professor Federico Fabbrini:** The Windsor Framework is a very positive development in terms of rebuilding trust between the UK and EU and in defining some of the issues surrounding the Protocol. However, I do not believe there was a democratic deficit in the Protocol in the first place, and the EU never

conceded that there was one. The technical changes are politically significant but do not fundamentally overhaul the structure and content of the Protocol from a legal perspective. The ‘Stormont Brake’ is the main novelty but has been over-emphasised in the journalistic responses. It is a very specific mechanism that will only apply to new EU legislation and is subject to a number of substantive and procedural provisions, most importantly the fact that the Stormont Executive must be in place.

**Thomas Sharpe KC:** Of course there has been a democratic deficit and on one level it will remain. The status quo is what was agreed in the Protocol and enshrined in the Trade and Cooperation Agreement. What is unique about the Windsor Framework is that it allows a carve-out for a Member State from the application of new EU laws. It provides the means by which new laws can be opposed. It is an extraordinary development in the context of the development of EU laws and could set a precedent for Catalonia or parts of Denmark. Due credit must go to the people who negotiated this. It is extraordinary but also limited because the circumstances must be quite extreme, but that is to be expected given how much of an innovation it is in terms of the development and application of EU law. Questions remains over the role of the CJEU and how arbitration will work.

**Dr Anthony Soares:** I am advocating for improved co-operation, either on a North-South or East-West basis. I would stress that the Windsor Framework represents a remarkable achievement. That we have got to this point is something to be welcomed and it is hoped that it represents a more positive relationship between the UK and EU going forward. On the democratic deficit, what the UK Government and Northern Ireland Executive must do is to build those relationships with Brussels to look at EU law coming down the track and avoid crisis points. The ‘Stormont Brake’ is a remarkable thing but we must look at how this new provision will impact North-South relations, economically and in terms of the peace process. We must also look at legislation coming from Westminster and its impact on North-South and East-West relations.

**Professor David Phinnemore:** A lot of the issues that have been flagged over the last few years have been addressed, which is to the credit of the negotiators. On the ‘Stormont Brake’ there has been a significant shift in the engagement with Northern Ireland. Under the current arrangements, changes or replacements to EU law apply automatically to Northern Ireland. Now they are subject to the ‘Stormont Brake’, which is significant. Another issue is the substructure of the governance arrangements for the Protocol. There has been a significant expansion of the opportunities for stakeholders to engage more formally through the Working Group and the Specialised Committee. This will help to recognise the issues that continuing divergence throws up, so that concerns can be fed into the development of legislation before the decisions are taken. That means contestation can be kept to a minimum and there would be fewer instances in which the Assembly would want to trigger the ‘Stormont Brake’.

**Lord Thomas of Gresford:** I have been concerned as to how Northern Ireland could have a voice in European Directives before they are made and I notice that paragraph 69 of the Government’s Command Paper focuses on stakeholder engagement. How can the Northern Ireland Executive, its elected politicians and officials, be included in these new structures?

**Roderick Crawford:** The democratic deficit is a matter for British constitutional traditions and not the EU and we are entitled to make our own decisions on that. It has taken months for people to understand the details of the Protocol and we

are only 48 hours in so there are no experts on the Windsor Framework yet. The biggest impact on the democratic deficit is that Northern Ireland consumers will now operate within the UK internal market. The pushing back of EU law has pushed back the experience of the democratic deficit, even with measures such as the ‘Stormont Brake’.

**Professor Vernon Bogdanor:** There is a democratic deficit because Northern Ireland is subject to taxation and laws without representation, which was a complaint made by the American colonists in the 18th century. Having a say is not the same as being represented. The only other example I can think of a border between two parts of one state is between Denmark and the Faroe Islands. Also, Northern Ireland is subject to the Court of another jurisdiction and it is more difficult to export to Northern Ireland than it is to another part of the United Kingdom. The referendum asked if the United Kingdom should leave the EU, not just Great Britain. Logically, you cannot be a member of both the UK and EU internal markets unless the rules are exactly the same, in which case you can ask what is the point of leaving the EU Single Market. The democratic deficit is inherent in the Protocol, which is a breach of principle in terms of our constitutional practice.

**Baroness Ritchie of Downpatrick:** The Government says that the ‘Stormont Brake’ will not be available for ‘trivial reasons’, there must be something ‘significantly different’ in the content or scope of new EU legislations and MLAs must be able to demonstrate a significant impact on everyday life. How will this mechanism work in practice in terms of the processes to be followed and the tests to be met?

**Professor Catherine Barnard:** There are four cumulative criteria, making the ‘Stormont Brake’ something of a nuclear option, to be threatened but not used. Something similar is in the Norway agreement. In addition to the fourth criteria that Baroness Ritchie outlined, the EU emphasise that it must be used in the most extreme circumstances and as a last resort, as well as being triggered by 30 MLAs. That suggests it will very rarely be used. However, more positively there is much emphasis on consultation which may make it less necessary. Remarkably, there is little in the Command Paper about the CJEU and much more emphasis on it in the Commission’s statements. That is because not much has changed. What the EU has seemed to commit to is not rushing to infringement proceedings. I think it probably was provocative when the UK unilaterally extended the grace periods that the EU immediately resorted to starting infringement proceedings; but the EU has now withdrawn the remaining infringement proceedings. Despite all the talk about the CJEU, it is a backstop and has not actually had a say on anything to do with the Protocol. On Lord Thomas’s point, I can see something positive coming out of this, which is engagement through UK-EU structures, meaning the UK will have to engage with new EU rules. This will be a way that the UK will be forced to keep an eye on new developments in EU law concerning goods.

**Dr Graham Gudgin:** The normal definition of a democratic deficit is that laws are imposed, on which Northern Ireland electors have had no say. Consultation is neither here nor there. It was possible to petition medieval monarchies and no one would argue those were democracies. In the new Framework, all the existing EU Regulations still apply and EU law still applies to trade, though it has been made simpler through removals and derogations. It is difficult to see where the UK gets its figure of 1,700 pages of EU law when lorries still require certificates and the EU says that it can remove derogations if it is not satisfied with the UK’s safeguards. Having said that, the practical experience for everyday traders has been much improved. Customs declarations are still there but will be filled in by

the Trader Support Scheme. That is much improved for the traders but as the customs rules are still there it means that the democratic deficit remains.

**Lord Hain:** I think there definitely is a democratic deficit. My understanding is that Norway is quite satisfied with its process of giving input into new EU laws and it is analogous to Northern Ireland in being outside the EU but inside the Single Market. On the pre-legislative consultation, it could mean that Northern Ireland politicians, officials and stakeholders could be consulted. Isn't there an arbitration system in the Framework involving UK judges too, before escalating to the CJEU? I raised in the House of Lords yesterday that some are saying that they want nothing to do with any EU law in Northern Ireland. Aren't they effectively saying that they do not want Northern Ireland to be in the Single Market?

**Peter Summerton:** I am involved in the mechanics of how trade works and what we can see from the Framework is that Northern Ireland does remain in a free movement of goods area with the EU but not with the UK. If you look at the criteria for the Trader Support Scheme and the maintenance of customs declarations, inspections, surveillance and new labelling requirements, Northern Ireland clearly has a disadvantage with its main trading partner, the rest of the UK. That is just the green lane and it is only for finished products. There is still friction and supply chains will re-align. Why would you bring frozen foods into Great Britain to supply to Northern Ireland with the new requirements? You would move them in via the Republic of Ireland. And that was previously a more expensive supply chain, otherwise it would have been used more extensively before.

**Stuart Anderson:** The starting point has to be the status quo and are we in a better position under the Windsor Framework? The broad position of our members is that we are in a better position. If we listen to the retailers, they are cautiously optimistic and this response should be encouraged. On the discussion around EU law, I would ask the same question as Lord Hain and also ask what the disapplication of EU law would mean for the Single Electricity Market. My members think we are in a better position with the green lane and the red lane. This is a Framework and legal changes are required so we have not seen the detail of how this will work operationally. We must be careful not to give strong views on technical details when the operational detail is absent. We have limited capacity to manage these changes and we should upskill and resource the business community to adapt to them.

**Professor David Phinnemore:** The UK should include Northern Ireland officials as part of its delegations to the structures. It is also worth thinking through the structures for monitoring what comes through from the EU. We need effective mechanisms for input from Northern Ireland civil servants and politicians and for taking that forward as part of the position the UK takes in its engagement with the EU. There is a Commission Statement as part of the package which speaks of enhanced engagement with Northern Ireland stakeholders on EU legislation and its impact. What the UK says in the Joint Consultative Working Group about the impact on Northern Ireland must be communicated to the Member States. What is also important is that the Special Body on Goods will look not just at divergence from EU law but also at how new developments in UK law impact on the operation of the Protocol. Really interesting structures are being created to improve the dialogue around the impact of new proposals on Northern Ireland and opportunities for Northern Ireland to feed into that dialogue.

**Lord Jay of Ewelme:** You spoke of the potential burden of some of the Framework's proposals on the Northern Ireland Civil Service. Does this mean that reform or more resources for the NICS is needed?

**Dr Anthony Soares:** The structures do include Northern Ireland stakeholders and the UK, but it is incumbent on the UK side to maximise Northern Ireland input as part of its own engagement. I would hope that consultation today has gone some way beyond medieval times and it is absolutely crucial in determining when to use the 'Stormont Brake'. It is important to look at how that consultation is done, who it consults and how that evidence is used, so that not just a narrow range of people are consulted. I think that this Framework is testament to where consultation has brought us. I think the Northern Ireland Business Brexit Working Group is an absolute testament to the work that consultation can do and has to be commended. Consultation has to be both North-South and East-West and not just one of those poles. Resourcing is key. Consultation has taken a lot of our time and resources and it takes away from what organisations are actually funded to do. The duplication of consultation, meeting both sides separately, also takes resources. It is very rare that we have been able to be involved in a consultation process with both sides present. Finally, I absolutely agree on Lord Jay's point. The Northern Ireland Assembly and Civil Service all need more resources and expertise, otherwise the Assembly's attention will be diverted from the other matters it needs to attend to.

**Professor Peter Shirlow:** One issue on stakeholder consultation has been the lack of consultation on what this all means for the Northern Ireland economy and how to operate in two different customs areas. Without an Assembly, there is no way of planning a post-Windsor Framework economy, in terms of either Belfast overheating or Derry/Londonderry being nowhere near Belfast in terms of productivity. Without political leadership, due to the contentious nature of the constitutional issues, we have not been planning for this. There have been a lot of vox pops in the Sandy Row and deprived loyalist working-class areas but most Protestants do not live in deprived working-class communities and there has been a much wider range of views coming out in surveys. Over 80% of unionists overall agreed that derogations and mitigations on medicines produced good outcomes. The media is not highlighting this evidence that the unionist community is perhaps not as oppositional as is sometimes portrayed. At a societal level, it is clear that the heat on social media is in the 'No' camp because there is more passion associated with that sort of politics. It is important that the UK sells this agreement and its potential benefits. We don't have the energy we had at the time of the Belfast/Good Friday Agreement and a lot of the big issues about the future, economic development and the next generation of the peace process are not being discussed.

**Mary Madden:** I agree with Peter Shirlow's comments. At the press conference, I was delighted to hear of all the advancements announced by the Prime Minister, especially in relation to medicines. This issue impacted right across the community. I disagree with Federico Fabbrini that there is no democratic deficit. In Northern Ireland we very much feel that there is one. The Stormont Brake is a unique way for the EU to address this and it is to be welcomed, although the devil is in the detail. We need clarity on the red and green lanes and how the Stormont Brake will work in practice. I struggle to understand how this is going to work. We are a very divided community and it needs a lot of work to get consensus. In order for the Stormont Brake to be seen as addressing the democratic deficit, pre-consultation and structures for that will assist in getting a better understanding of views on EU laws coming into force. These are important preliminary steps. There is a



real resource issue around machinery of government. I am not sure the necessary expertise exists within the current civil service in Northern Ireland, so they would need to be geared up and schooled up. That means working very closely with colleagues in the UK Government to get those skills in place so we don't put too much energy and resource into one issue to the detriment of other key issues for citizens such as healthcare and education. The reaction to the Framework in civic unionism is much more positive than some voxpops and social media would suggest. The Government, the Prime Minister and others should be pushing out strong communication as to what the benefits are and where more work is needed to make it work more seamlessly. Politicians are looking at their electorate and their communities. We need to give our communities the strength and understanding of what is proposed so they can inform and support our politicians who we require to give us the political leadership. We would not have got devolution of policing without community representatives saying they could work with it. We need public opinion behind the deal so that politicians can come on board.

**Professor Federico Fabbrini:** Coming back to the democratic deficit, I appreciate it raises passions and emotions but we need to create conceptual clarity so as not to have unrealistic expectations. I respectfully dissent from those arguing there is a democratic deficit. There is no such thing for three reasons. First, EU internal market legislation applying to Northern Ireland by virtue of the Protocol was approved when the UK was a Member State, so Northern Ireland had a say as the UK was represented in the Council of Ministers and the European Parliament at the time of adoption. Secondly, the Protocol and the Withdrawal Agreement, which foresee the application of some EU laws in Northern Ireland, were democratically approved by the UK Parliament, in which Northern Ireland is represented. Thirdly, Article 18 of the Protocol itself sets out a consent mechanism whereby democratically elected representatives of the Northern Ireland Assembly vote every four or eight years on whether to retain internal market laws. For these reasons, it is improper to argue that the Protocol had any democratic deficit, and arguments to that end usually conceal something different, which is the desire to give Northern Ireland (or the UK) a right to veto the application of EU law, which is something no other country (much less sub-national government) has in the EU. With that said, the Stormont Brake enhances the democratic voice of Northern Ireland, with a retail instrument beyond the whole instrument provided by Article 18 Protocol. The Stormont Brake only addresses this issue in connection to new EU laws applying to Northern Ireland: it is not a retroactive power. It is not a veto power for the past, it only applies to the future. Instances when the EU will fundamentally revise its internal market rules are pretty minimal. We should not raise expectations. It does something helpful by complementing Article 18 with a tailor-made way for Northern Ireland to object to future internal market laws. In effect, the Article 18 mechanism is a wholesale mechanism whereas the Stormont Brake is a retail mechanism.

**Thomas Sharpe KC:** Recollections may differ in regard to parliamentary approval of EU Regulations when the UK was a Member State. No EU Regulation has been approved by the UK Parliament. Rather, the Council of Ministers has a role in the way laws are made in the EU. The Protocol ought in theory to work smoothly. Many say it is a wonderful sweet spot in terms of access to the UK and EU markets and should be a prosperous zone for Northern Ireland. It has done this to some extent but not to the extent promised. Businesses are concerned about the extra burdens of labelling. The Committee should hear from Archie Norman and Lord Wolfson about practical issues regarding labelling. We have heard more than once that the Stormont Brake is a last resort. Of course this is the case, and

the Commission has emphasised this. There is no surprise there, nor in the fact that the UK does not emphasise this. It is not the case that the qualifications in the document mean that it can never be invoked lawfully. All it says is that the UK must have a detailed explanation of its position, and establish that there has been a significant impact on the status quo and on everyday life that is likely to persist. This is a description of a large number of EU Regulations and Directives. Some are trivial but some go to the heart of trade. I find it hard to believe that Northern Ireland and the UK more generally could be sufficiently powerful and influential to persuade the Commission not to advance a Regulation or a Directive. This creates a carve out for Northern Ireland due to lobbying from stakeholders. This doesn't happen in Norway where EU laws are faxed and implemented there. The Stormont Brake could easily be invoked more frequently than we envisage, so we need to understand how it will be dealt with by arbitration, and the role that the CJEU will play. It is unclear if it will play any role: on its face there is no obvious difference between the arbitration process here and in the Withdrawal Agreement.

**Lord Godson:** I declare my interest as Director of Policy Exchange. At this inflection point, where does the Windsor Agreement leave the all-island economy.

**Dr Graham Gudgin:** I can respond as an economist. In reality, Belfast is not a particularly prosperous city by UK or European standards. What are we to expect economically from the new arrangements? Northern Ireland's access to export markets and import sources is a little worse than when we were EU members. Then it had customs-free access to UK and EU markets and unimpeded imports from both. In future it will have customs free access to the EU but imports from the UK will still be somewhat constrained. The impact will not be as costly but it is still there. Northern Ireland will be a little worse off than when we were in the EU. It will be better off in the sense of advantage over UK producers who do face customs costs when trading into the EU. If we look at the data, there has been very little impact on total exports from the UK to the EU, and it is hard to imagine UK firms moving to Northern Ireland. Also, Northern Ireland firms continue to be subject to EU Regulations on production. Northern Ireland firms may find themselves at a competitive disadvantage compared to British counterparts, for instance in relation to GM products or manufacturing. There are pros and cons and it is hard to imagine many firms will choose to move location as a result of this. It is a bit like the Belfast/Good Friday Agreement, which was greeted by expectations that the Northern Ireland economy would improve, when in fact performance relative to GDP worsened over the next decade. This was because the Troubles had a smaller economic impact than many realised, and partly because of the economic impact of subsidies to Northern Ireland to compensate for the difficulties it faced. These new arrangements will make no noticeable difference to the Northern Ireland economy, which is not doing too badly in the UK context.

**Roderick Crawford:** The democratic deficit becomes more important the more salient the issue is, for instance taxation. The key issue will be how smoothly the UK and the EU make it work. It is early days, but there is a certain Heath Robinson element to the workings of this. If, despite this, the UK and the EU can deliver their promises regarding Northern Ireland's seamless participation in the UK internal market for goods and depoliticise it, the issues around the democratic deficit, which are difficult to master, will become less important on the ground. You can tackle the democratic deficit by tackling the salience of the issues that make it an issue.

**Professor Duncan Morrow:** I want to go back to issues about the Stormont Brake. Integrating this into the Petition of Concern has included it in the most

contentious element of the Assembly's rules, suggesting that the veto power of the Assembly is being enhanced when this has previously been a significant and contentious issue for both sides. Anything that strengthens the Petition of Concern without explaining what it looks like will change the constitutional powers of the Northern Ireland Assembly. In the new version of Petition of Concern under the Stormont Brake, it will be referred for arbitration. The Government may find itself arbitrating between a majority and a minority point of view, and choosing between two diametrically opposed perspectives in the Assembly, so involving them in the local politics, what democracy means in Northern Ireland, and what the democratic deficit looks like. If the Government backs a minority Petition of Concern against a majority view in the Assembly, this could have complex and unintended consequences in the Assembly. This raises a set of complexities we haven't thought through, including what we mean by democracy. We need more detail on what pre-consultation will look like for the Assembly. If we rely entirely on this mechanism to meet the democratic deficit, it will be a nuclear option which doesn't resolve the issue but rather pushes it into a new realm of complexity.

**Professor Vernon Bogdanor:** I would like to respond to Lord Hain's question regarding Norway's experience. Norway has found the arrangement satisfactory but second best. The Norwegian elite wanted the country to join the EU, but membership was twice defeated in referendums. As a second best Norway stayed in the Single Market, which the UK did not do because it would have meant outsourcing regulation of the financial services industry to Brussels. Students in Oxford, the women's suffrage movement and the leaders of the American Revolution in the 18th century all wanted more than consultation: they wanted representation. We should not exaggerate the benefits of consultation. Norway is regularly consulted by the EU on internal market rules. But there are few, if any, examples of Norwegian influence. For this reason, Norway is known as a fax democracy, since the rules are faxed to her for comments. Whether Northern Ireland should be in the EU Single Market is a political question. It cannot be in both the UK internal market and the EU Single Market unless their rules align. If they do, that raises the question of what was the point of leaving the EU. It also undermines, for good or ill, a basic point of the British constitution, because the referendum asked if the UK, not Great Britain, should leave the EU. The Prime Minister has done the best he can within that constitutional framework.

**Dr Mary C Murphy** said that the all-island economy is a work in progress, and is not heavily established or particularly sophisticated. In Cork, it is not heavily integrated and remains under-developed, but it is more developed in the Dublin-Belfast corridor and border areas, based on complex cross-border supply chains. The Command Paper talks about the possibility of future North-South divergence. That may become problematic practically, symbolically, politically and economically. This needs to be monitored quite closely. On implementation of the Framework, the agreement is based on a compromise. It is also very complex and cumbersome in places. There are areas that are yet to be agreed. It speaks of new arrangements for new and existing bodies, monitoring and enhanced market surveillance. There is much still to be agreed and established. I agree that the design of processes and institutions should be sensitive to Northern Ireland's particular needs. In the 25th year of the Belfast/Good Friday Agreement, reflecting back on those negotiations, inclusiveness was one of the key principles to its establishment. Inclusiveness makes the process of implementation all the more legitimate. You need to bring key civic society actors into that process. The issue of resources is absolutely critical here. The new roles envisaged are onerous for civic society, the civil service and politicians. Northern Ireland does not have an established culture

of scrutiny of EU issues. There is a need for significant upskilling to help those key actors contribute effectively. Northern Ireland remains a divided society and a post-conflict society in transition. This requires the high-level attention of the British Government. I compliment the Prime Minister for his sensitive handling of the issue. On communication, I agree with Peter Shirlow that significant work needs to be done about communicating the terms of the agreement to Northern Ireland society as a whole, in order to create a critical mass of understanding.

**Baroness Ritchie of Downpatrick:** I agree with Mary C Murphy regarding the importance of inclusion and respect for political difference ahead of the agreement of the Good Friday Agreement. The political actors need to get back to that situation. Both the UK and Irish Governments need to be involved directly with politicians on both a North-South and East-West dimension. There is a need to copper-fasten this dialogue, which is difficult when the institutions aren't functioning. In terms of cumbersome arrangements, how will the Stormont Brake reflect itself in legislation, or is it too early to say?

**Dr Sylvia de Mars:** I want to speak about the role of CJEU. I have been puzzling over it for the last 12-24 hours. All parties are trying to downplay its role and are not addressing how it interacts with the Stormont Brake. What if there is a disagreement over whether the conditions for triggering the Stormont Brake have been met? The EU may say that the conditions haven't been met, which then goes to arbitration under the Withdrawal Agreement. Will that arbitration involve the CJEU? I can imagine situations where it would or would not be involved. To qualify for the Brake, the amending or replacing EU acts in question have to be significantly different and shown to be having an impact on everyday life. The arbitration panel would have to address the evidence the UK was presented with in light of those conditions. Depending on the nature of the changing EU law, the evidence may rely on its content. In one example, if the law was changed in ways that were not entirely clear, there may be a question of the interpretation of EU law which would have to go to the CJEU. But if the change was very straightforward, that wouldn't be required. If the use of the Brake goes to arbitration, I don't see how that would not regularly involve the CJEU in interpreting EU law. That is being downplayed because it doesn't fit with the goals of the negotiation to minimise the role of the CJEU. I am with the cautiously optimistic side of the room. The Framework is not perfect and there is still a democratic deficit, but given the constraints of EU law and the situation Northern Ireland finds itself in, it represents progress and politicians will have to work hard not to escalate issues in the new Framework.

**Professor Peter Shirlow:** I would like to reply to Mary C Murphy regarding Northern Ireland being a post-conflict society. Concerns over the threat of violence and a return to a hard border had an impact on the Protocol talks. But Northern Ireland is a more peaceful society, as a comparison of statistics on seizing of explosives and shooting incidents between the 1970s and now demonstrates. On issues like trade, shopping, consumption and welfare, there is not a massive difference between the views of unionists and nationalists. There is now much more integration in housing and schools, and we don't factor in the 90% reduction in violence as a result of the peace process. Northern Ireland is far removed from the worst times. We need to acknowledge the positive developments that have taken place. If we forget that, we give power to those who threaten violence. We need to recognise how far our society has come. The reaction to the recent shooting of a police officer in Omagh shows societal opposition to such acts of violence.

**Dr Graham Gudgin** asked for Mary C Murphy's reaction to the Prime Minister's comment in his press conference that there is no such thing as an all-island economy, but rather two distinct economies which he hoped would collaborate.

**Dr Mary C Murphy:** My previous comments were a response to a question from the Committee. In 1992, Sir George Quigley talked about a regional space and an economic zone. An economic union is not the same thing as a political union.

**Dr Anthony Soares:** We need to remember that Northern Ireland is only in part of the EU Single Market. It is not in the Single Market for services, and this has severe and crucial implications for North-South and East-West cooperation. We are starting to see the practical effects of this. For instance, cross-border insurance is now an extremely complicated issue. Article 11 of the Protocol talks about the UK and the EU ensuring maintenance of the necessary conditions for North-South cooperation. This is very difficult to do when there is potential for further divergence, as paragraph 55 of the Command Paper makes clear. The UK is within its rights to diverge in terms of Brexit, but as it does so it needs to consider the implications when it has committed to maintaining the necessary conditions for North-South cooperation. It is about protecting the Belfast/Good Friday Agreement in all its parts and the totality of relationships across these islands. This has become incredibly difficult since 2016.

**Baroness O'Loan:** Is there anything positive to say about how we can take the implementation process forward? There is no sitting Assembly. If we consider the frailty of the democratic institutions in Northern Ireland, is there anything that can be done in setting up bodies and processes to facilitate the end game of the Belfast/Good Friday Agreement, which is peace?

**Mary Madden:** I am not disagreeing with Peter Shirlow, but the absence of violence is not the same as peace and we need to keep working on that. There is a lot to welcome in the Windsor Framework but the devil is in the detail. It is crucial that the UK Government doesn't take its eye off the ball. It needs to get all the detail thrashed out in consultation with people in Northern Ireland and the Commission. The communication from the Government is critical to the success of getting this to where we want it to be. As George Mitchell said, we have an agreement, but the work begins.

**Professor David Phinnemore:** One of the assumptions of the research project being undertaken by Queen's University Belfast is that when looking at legitimacy, we need to think about influence on decisions and the effect of decisions. There is also throughput legitimacy. The crucial requirements are clarity about what is happening, the need for information to be available about Northern Ireland, and some voice in the process about what is actually happening. There has been a perception that what is happening under the Protocol is done to Northern Ireland not with Northern Ireland. That engagement can take a variety of forms, including the democratic consent mechanism, the Stormont Brake, engagement with civil servants, consultation, the role of MLAs, and stakeholder engagement. We need clear transparency about these arrangements and clear evidence of Northern Ireland participation in these processes. The outcome and the process may not be perfect, but at the moment the feeling is that Northern Ireland is not listened to. Under the Windsor Framework, it is crucial that Northern Ireland is listened to. We need clarity on how those processes will work. Enhancing the legitimacy of the agreement requires engagement with Northern Ireland throughout, not at the end of a UK-EU process.

**Lord Thomas of Gresford:** What is needed is more transparency. The Joint Consultative Working Group should include representatives of the Northern Ireland Executive and civil service, but this is not laid down in a transparent way. It would be preferable for the voice of Northern Ireland to be heard more clearly and openly than under these arrangements.

**Professor Federico Fabbrini:** I have three concluding points. First, the Stormont Brake creates huge pressure for the Northern Ireland Executive to be restored because the mechanism can only be applied if the First Minister and deputy First Minister are in place. This creates a huge imperative for them to be in place. Secondly, it is very interesting that this agreement will be operationalised by a simple decision of the Joint Committee, which is entitled under Article 164 of the Withdrawal Agreement to make changes to the Withdrawal Agreement itself. As such, we are not really looking at a new treaty but rather internal revisions. That process is simpler, although it will require UK and EU implementing measures. Finally, the DCU Brexit Institute has already produced some legal analysis of the Windsor Framework and I commend that work to the Committee.

**Dr Graham Gudgin:** One thing we haven't discussed is the role of the DUP in all of this. The EU was brought to the table because of the DUP veto over the Northern Ireland Assembly and the power-sharing institutions. The veto has become increasingly controversial, and it would have been interesting to hear about the continuing legitimacy of that veto.

**Lord Jay of Ewelme:** Unfortunately we have run out of time to explore that now. We would welcome any follow-up written comments. Thank you all for your contributions. This discussion has shown that this is a highly complex agreement in which details really matter, and it may take some time to get under the surface of the agreement. The Committee will do that over the coming weeks and months. This is not the end, but the beginning of a highly complex process. We need continuing UK Government involvement in the process as opposed to the assumption they have now done the hard bit.

## APPENDIX 5: NOTE OF ROUNDTABLE SEMINAR WITH BRUSSELS-BASED BUSINESS STAKEHOLDERS, 25 MAY 2023, BRUSSELS

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1. On Thursday 25 May 2023, during a two-day visit to Brussels, the House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland held a roundtable seminar with Brussels-based business stakeholders as part of its inquiry into the Windsor Framework.
2. The participants were as follows:
  - Sharon Leclercq-Spooner, Chair of EU-UK Task Force, American Chamber of Commerce to the EU (AmCham EU)
  - Robin Manning, Director, British Agriculture Bureau, and Co-Chair, British Chamber Trade Policy Committee
  - Oran O'Connor, Trade Officer, British Chamber of Commerce EU and Belgium
  - Emilien Thorin, Business Development Manager Benelux, Invest NI
3. A note of the discussion follows.

**Lord Jay of Ewelme** introduced the Committee and invited the panellists to introduce themselves.

**Sharon Leclercq-Spooner:** AmCham EU has 160-170 members, including all the big names of American business. It was established in the EU a long time ago, and I have been involved for the last 30 years. I used to chair the Trade Committee in the run-up to the TTIP negotiations, and I now chair the UK-EU task force. We have two priorities: the development of the Single Market; and a good transatlantic relationship. I also want the UK-EU relationship to feature a bit more. We have spent decades trying to ensure as much free trade as possible within the EU, and trying to establish better relations between the EU and US, including common standards, mutual recognition or alignment where possible. It is disappointing for international investors, who seek international standards and don't want to deal with more regulations than necessary, to see the UK going in the other direction.

**Robin Manning:** The British Agriculture Bureau represents the four farming unions of the UK in Brussels, including the Ulster Farmers' Union. We have been here for 50 years since we were established in 1972 under Lord Plumb, who was an important figure for UK and EU politics, especially farming. Around 2018/19, the National Farmers' Union concluded that, if it was not represented in the EU it would not be effectively plugged in. It therefore decided to keep the Brussels office. Our role, as in the past, is promoting UK farmers in Brussels, but now we use more diplomatic and soft power tools, including through Copa-Cogeca, the organisation representing farmers and cooperatives in Europe. We prioritise engagement with Ireland, France, the Netherlands, Denmark, Sweden and Germany as the main suppliers to the UK, as well as the Mediterranean countries. The Windsor Framework is a real breakthrough in terms of improving the mood music between UK businesses and the Commission. We are now getting the sort of access to the EU institutions, including formal meetings with the Commission, that we might have expected but couldn't because of the difficult political climate. We want a trading relationship that works, both between Great Britain and Northern Ireland, and between the UK and the EU. There were real issues with that, and we hope that the Windsor Framework will be a springboard to a more

progressive, collaborative and friendly relationship going forward. In the agri-food sector, the UK and the EU are each other's most important market. We don't want friction and the relationship needs to work even with the UK outside the EU. The TCA is a good agreement to build trade, and progressive and productive relationships, with the EU.

**Oran O'Connor:** We are a traditional chamber of commerce representing British businesses in Belgium, but also with an EU dimension. We therefore have split duties, covering both bilateral trade with Belgium, and trade with the EU. I provide the secretariat of the EU trade policy committee.

**Emilien Thorin:** I work in the Brussels office of Invest NI, which is part of its global network of offices. This is one of the most important ones, covering Belgium and the entire Benelux region. We seek to encourage foreign direct investment to Northern Ireland, and we help Northern Ireland companies to come and do business in this region, advising them and connecting them with the right partners. Invest NI sees the Windsor Framework as an opportunity to attract new investment in sectors such as aerospace and manufacturing. Northern Ireland is in a unique position to benefit from access to two markets for the benefit of its economy. I get asked lots of questions by people here, and there is a need for clarification about the operation of the Windsor Framework. When we know what the agreement will entail in practice, we will be able to work things out. People are not worried, but are curious as to how they can work with businesses in Great Britain and Northern Ireland.

**Baroness O'Loan:** Are the concerns of the unionist community appreciated in Brussels? Have you been able to facilitate understanding of these continuing concerns given that the Assembly is not functioning?

**Sharon Leclercq-Spooner:** AmCham is not involved in political discussions. We are totally in favour of the Windsor Framework, but we try to avoid the politics. It is difficult for international investors to understand how one group can block the development of the economy.

**Robin Manning:** Unfortunately we can't avoid the politics. Aside from Ireland, there is no real understanding in Brussels of some of these issues. Brussels interlocutors speak of the importance of the Belfast/Good Friday Agreement, but there is not really an understanding of what it is about. Part of our role is to provide that education. One of the important aspects of being here is explaining the counterfactual. There is a perception in the EU, fed by the Commission from a certain perspective, but there are two sides to every coin. We take some time to explain why the issues are important, and what the sensitivities are regarding the availability of products. We engage with MEPs, trying to rebuild links. The UK has no MEPs, but we have good engagement with Irish MEPs given the importance of agriculture to the Irish economy. We have worked together with the Ulster Farmers' Union, whose Parliamentary Officer works with us to build contacts. This has been successful and we want it to continue. We work closely with civil society organisations such as the European Economic and Social Committee. They have published a report and their rapporteur is a Dutch colleague. Through our membership of Copa-Cogeca we seek to explain what the trade issues are and the need to be sympathetic to those concerns. If we don't do that explaining, no one else would do it. The Northern Ireland Office in Brussels do it at official level, and we do it at business level.



**Oran O'Connor:** This is not completely relevant to our members. The British Agriculture Bureau is one of our members. We are more focused on explaining the Windsor Framework in principle to our members. Our members had a meeting with the Deputy Ambassador of the UK Mission, who explained the Windsor Framework and where continuing issues could exist. There was a high attendance and a great level of interest in the Windsor Framework. There is some misunderstanding of why the DUP still have objections.

**Emilien Thorin:** We have a similar, politically neutral, role. Our goal is to create jobs in Northern Ireland and help companies to export and attract investment. Our education role is more about how to export, do business and invest, not the political context. Political stability helps but we don't focus on it.

**Baroness Ritchie of Downpatrick:** Businesses are concerned about a cliff-edge for veterinary medicines at the end of the grace period in 2025. What discussions have you had in Brussels with the Commission in relation to agreeing a permanent solution?

**Robin Manning:** While there is much to appreciate in the Windsor Framework, there are still some question marks. The number one issue is veterinary medicines. I have just returned from a meeting on the issue this morning. The original cliff-edge was 29 December 2022, before the Commission published its notice. We were grateful for it, but it came awfully late. We want to see a concerted effort by the UK and EU to get a workable solution. We don't know what it is, but if it was possible for human medicines, it should be possible for veterinary medicines. The issue can't be pushed under the table. It is enormous. If you are in any doubt about the use of medicines to treat animals, that is a bad news story that the UK Government and the EU would not want. I am optimistic something will happen, but there needs to be a concerted effort by both sides. Ian Paisley Jr asked a question about this at Prime Minister's Questions yesterday. The Prime Minister referred to the three-year grace period. We need to find an agreement in that three-year period and not get to another cliff-edge. One option may be an agreement on closer SPS alignment between Northern Ireland, or the UK as a whole, and the EU. We are moving away from the hard situation we had before, with an emphasis on a unilateral ability to make our own rules. This is the essence of Brexit, but the reality is that if you want to trade with bloc of 570 million people, you have to respect their standards. There needs to be a coming together between the EU and Northern Ireland, or the UK as a whole. We would support a closer relationship that would avoid issues that may come up due to regulatory divergence. Unless it is managed properly, divergence will only lead to disruption to trade. We definitely need something for Northern Ireland, but why not make it broader than that? Trade between Great Britain and the EU, and vice versa, is enormous. We don't want to erect borders preventing normal trading relationships occurring. We are also in a cost of living crisis and don't want to increase prices in the shops. I appreciate it's not easy, but with goodwill we can come to an agreement that doesn't necessarily tie you into a Swiss-style system, while at the same time avoiding diverging standards in Great Britain, Northern Ireland and the EU becoming barriers to normal trade.

**Baroness Ritchie of Downpatrick:** What is your assessment of the Windsor Framework's provisions on customs procedures and the green lane? What further information should the UK and the EU provide about the operation of customs and trade provisions? We have taken evidence from businesses expressing concern about the lack of information on the labelling provisions.

**Emilien Thorin:** We need some clear guidelines and information that is set in stone and can be communicated to businesses which come to us. We get asked a lot of questions and it is a complex issue. A company may ask specific questions about sending particular goods, and it is not easy to help because the situation is evolving.

**Oran O'Connor:** All of our members want legal certainty, in particular when timeframes are pushed back, for instance in relation to the Trade Border Operating Model and labelling. We have not had a chance to poll our members, but other British Chambers have raised concerns about differentiating products going to the EU, and the potential disruption for Northern Ireland.

**Robin Manning:** Certainty is key. The Windsor Framework has much to offer, and is an amazing piece of architecture to overcome intractable problems. However, we need practical information on checks, controls and red lanes, and how they will work. On labelling, we have heard concerns about the dual labelling requirement. It would be unfortunate if the Windsor Framework didn't fix the very issue it was designed to, in terms of ensuring the availability of the same products in Northern Ireland and Great Britain.

**Sharon Leclercq-Spooner:** I agree about the need for certainty and clarity. Our members are relieved that an agreement has finally been reached and want to see this enacted as soon as possible. It is time to move on. My understanding is that consultation with Northern Ireland and UK authorities on this specific issue has been very good, and better than previously. Clear information is always welcome. We are aware of some warnings. Some companies are thinking about whether they will be able to use the green lane, or just use the red lane by default because they can't be 100% certain what will happen to goods afterwards. We have not had an in-depth discussion about labelling, but I can make a general point about red tape and the risk of unforeseen consequences. I hope that the governance processes linked to Brexit will improve. I am very worried about the Retained EU Law (Revocation and Reform) Bill, even pared down, because it provides no certainty regarding stakeholder consultation and impact assessments. These are essential for good regulation, as is parliamentary scrutiny, which Brexit was meant to strengthen. It is a shocking bill. Somewhere along the line someone needs to stand up for good governance. Those of us in Brussels for many years have appreciated the British civil service and British officials in the EU institutions who were greatly respected. The British played a major role in building good practice and getting better regulation, impact assessment and consultation processes in the EU. The EU's mechanisms are far from perfect, but they have improved. Seeing such processes diminished in the UK, where they originated, is tragic.

**Lord Thomas of Gresford:** Is there a great advantage for business of access to the EU Single Market and UK internal market? If so, how are these benefits going to be sold?

**Emilien Thorin:** We believe there is an advantage. It can have a positive impact for the supply chain and create economies of scale, for instance in the co-location of manufacturing and distribution centres at a single point serving two markets. This is a unique advantage for Northern Ireland. It doesn't mean it will attract all companies, as investment needs to match a company's business model and whether they need dual access. Companies in Ireland do not have that dual access, although they have other advantages.

**Sharon Leclercq-Spooner:** We haven't had a discussion about the attractiveness of Northern Ireland specifically. More generally, legal certainty, good governance and stability are all important in terms of investment attractiveness. Sadly, Northern Ireland and the UK as a whole are not scoring so highly on those as they used to. It is disturbing to see no Executive in Northern Ireland for so long. Not having a proper governance system in place is a negative, but access to the EU Single Market and UK internal market is a positive.

**Baroness O'Loan:** Is the lack of a functioning Executive important for investors even though important issues like tax are not devolved?

**Sharon Leclercq-Spooner:** Westminster has lost a lot of credibility, because of its handling of the Brexit process and the lack of consultation on legislation. It was disturbing to hear that some business groups found it difficult to be direct and clear with the UK Government because they were worried about losing access.

**Robin Manning:** The lack of a functioning government in Northern Ireland is a concern to our members because important decisions around agriculture, sustainability and funding of projects in Northern Ireland need to be taken, and cannot be taken in the absence of a functioning Assembly. It is really important for the power-sharing institutions to get up and running again on the basis that the political parties feel able to do that. On investment, the agricultural sector in Northern Ireland is particularly important. Without certainty of access to markets in the UK and the EU, concerns grow about the viability of the current set-up of a strong dairy-producing country exporting 30% of its product to the Republic of Ireland, as well as strong meat and poultry sectors. These sectors need certainty of governance and investment, and assurances to be able to trade freely in the future.

**Oran O'Connor:** People are aware of the Windsor Framework through the news, but there has been a negligible impact in terms of the promotion of Northern Ireland as a place to invest. There has not been an advertising campaign to explain why business should use Northern Ireland. There has been a delay in that promotion activity, so it hasn't caught on as a reality. It hasn't necessarily put people off because the benefits of dual access are still there, but companies haven't fully got their heads around it. There needs to be further consideration of how to promote investment in Northern Ireland.

**Emilien Thorin:** We do our best to communicate the benefits of investment in Northern Ireland. People in the Benelux region don't know much about the implications of the Windsor Framework, or the political complexity of the situation in Northern Ireland. There is a need for further education, but at the same time there is an interest from companies we haven't seen before regarding the advantages of locating manufacturing in Northern Ireland. We have contacts with some major companies who are starting to look at Northern Ireland because of its access to the UK and EU markets. Political instability is not a big plus, but it is not a minus either. We are used to it in Belgium, and people do business anyway.

**Baroness O'Loan:** Is there recognition that the security situation in Northern Ireland has improved significantly?

**Emilien Thorin:** I have never heard concerns expressed about the security situation in Northern Ireland.

**Lord Jay of Ewelme:** How would you like to see consultation with business function?

**Robin Manning:** In terms of engagement with Brussels, under the original Protocol quite a lot of regulations continued to apply to Northern Ireland, and we were not very satisfied by the EU consultation process, and the lack of involvement with stakeholders in terms of regulations that will apply to them. The Windsor Framework opens up a channel to improve that, and I hope it does so. We need to establish a process for getting stakeholders involved in considering the implications of legislation, including secondary legislation. If we do not do so, we haven't met the objective of the Windsor Framework. The Commission highlighted the importance of consultation in its October 2021 non-papers, which led to the Windsor Framework provisions. Those provisions need to work properly. We want to ensure that agri-food is not lumped in with other issues, but is rather recognised as a product area so specific and important to Northern Ireland that it is dealt with appropriately.

**Lord Jay of Ewelme:** Can you make that point to the Commission?

**Robin Manning:** We will do, and we have also fed in comments to this Committee. I stress this point strongly to Commission and UK Government counterparts. If you are a Member State, there are certain checks and balances which ensure consultation is automatic, even if the process is imperfect. None of that infrastructure is in place for Northern Ireland at the moment.

**Baroness O'Loan:** Will the Stormont Brake infrastructure provide some basis for consultation?

**Robin Manning:** I hope so, but there needs to be a proper channel for agri-food as one of the most important industries in Northern Ireland, if not the most important. This is especially true in relation to secondary legislation. In terms of a model, we need something bespoke. Northern Ireland has no MEPs or officials attending meetings with the Commission.

**Lord Thomas of Gresford:** Do you agree that notice needs to be given to Northern Ireland stakeholders about relevant EU legislation?

**Robin Manning:** This needs to be done both at governmental level and through a stakeholder channel, involving farming unions, ourselves and equivalent trade bodies. There needs to be a structured process. This is not rocket science. It simply requires identifying the broad sectors and engaging with key stakeholders. There needs to be the opportunity for stakeholders to feed in to the EU legislative process.

**Lord Thomas of Gresford:** Can use be made of the new sectoral groups under the Joint Consultative Working Group?

**Robin Manning:** One issue will be the scope of those groups and how often they meet. The Commission legislative machine will not wait for six months for them to meet. Such engagement would be of great benefit to the EU and would give reassurance to stakeholders in Northern Ireland when they are subject to legislation under Annex 2 to the Windsor Framework.

**Baroness Ritchie of Downpatrick:** This Committee scrutinises EU delegated legislation, as well as Regulations. Have you made any assessment of the Windsor Framework's proposals on VAT, excise and State aid?

**Robin Manning:** The VAT provisions have no impact in terms of trade tariffs. We are concerned about State aid policy in the EU, where the reins have been taken

off. There are three temporary State aid frameworks in place for Ukraine, energy and the pandemic. Eye-watering levels of money are being spent to subsidise sectors. Poland alone has announced €2 billion in subsidies for farmers. This worries Northern Ireland farmers the most, in particular if farmers in Ireland avail themselves of those opportunities above existing Common Agricultural Policy payments.

**Emilien Thorin:** Some companies who used to get grants or subsidies via EU projects are now asking if they can access such funding. We don't have a very clear answer for them.

**Baroness O'Loan:** Has Brussels done its bit on enabling the Windsor Framework to be implemented?

**Robin Manning:** It has adopted the necessary legal texts very quickly. The UK has targets to complete its processes, including in relation to Border Control Posts, by the autumn. We see a new spirit of cooperation and we hope the UK Government is committed to that. But doing your bit is not enough. That will establish a more normal trade relationship, but that should just be the start.

**Sharon Leclercq-Spooner:** The spirit of cooperation is really important. For AmCham EU, generally speaking, access to deliberations by relevant EU bodies is variable and depends on goodwill. UK stakeholders may face similar challenges.

**Robin Manning:** We are trying to get people back into these bodies. We secured a place for an NFU colleague as chair of EPRUMA, the European Platform for the Responsible Use of Medicines in Animals. Another has a place on the fertiliser observatory. We are helping build links with Brussels and feed UK expertise to EU colleagues. We were shut out of EU processes for two years, and we now have the opportunity to come back and put the UK stamp on discussions as a reliable partner.

**Oran O'Connor:** Our members think there is an onus on the UK regarding construction of border control posts. We are looking forward to the relationship between the UK and the EU improving in the context of the 2025 review of the TCA, to ensure this is a useful review not a rubber stamp.

**Emilien Thorin:** The people I meet are willing to collaborate with UK partners, and there are new partners who want to speak to British counterparts. They are waiting for stability and clarity to do so.

**Lord Jay of Ewelme** noted that improved relationships are important for business. He thanked the participants and closed the meeting.