

The Windsor Framework following the Safeguarding the Union deal

A briefing for the Constitution, Europe, External Affairs and Culture Committee

Katy Hayward, 28th April 2024

The UK Government's [Safeguarding the Union](#) 'deal' with the Democratic Unionist Party (DUP) was published on 31st January 2024. It was specifically intended to address unionist concerns that remained over Northern Ireland's unique post-Brexit position and, in so doing, to see the DUP end its protest and allow the NI Assembly and Executive to be restored. The purpose of this briefing is to outline the core elements of that deal, its consequences and effects, and possible implications for Scotland and the wider UK.

The Windsor Framework

The UK Government's Safeguarding the Union Command Paper presents a package of measures and commitments that stand as an addition to the Windsor Framework. The Windsor Framework – as the Protocol on Ireland/Northern Ireland is now known – was agreed between the UK and EU on 28th February 2023 to temper some of the effects of the Protocol. It was enacted through a decision of the UK-EU Joint Committee that oversees the Withdrawal Agreement and implemented through UK and EU legislation. The most substantial changes made by the Windsor Framework were in two areas:

GB to NI movement of goods: A 'green lane' for trusted traders from GB selling directly to consumers in NI was introduced (in two forms: the NI Retail Movement Scheme for supermarkets and the UK Internal Market Scheme), alongside a 'red lane' for those whose goods were at risk of going across the Irish border into the EU. Goods prohibited in the EU could be allowed to be sold in NI through the green lane. This was accompanied by a number of safeguards, including the introduction of 'not for EU' labelling on agri-food products using the green lane. There was also agreement on the sale of human medicines in NI and on customs declarations on parcels GB to NI (allowing flexibility beyond that foreseen by the Protocol). But one area that remained subject to a grace period and still contentions was veterinary medicines.

Democratic guarantees: The Statutory Instrument for the Windsor Framework Democratic Scrutiny introduced three new roles for the NI Assembly. These have been emphasised in the Safeguarding the Union deal so are worth setting out here. First, there is a new *Democratic Scrutiny Committee* in the Assembly to follow the process of dynamic alignment of NI to a portion of EU single market legislation (primarily on goods). Second, there is a so-called '*Stormont Brake*' on amendments/replacements to EU acts under the Protocol which can be triggered by 30 or more MLAs from 2 or more parties. There are two tests for its legitimate use: (i) the content or scope of the act as amended or replaced needs to 'significantly' differ 'in whole or in part' to the act as it was before being amended or replaced and (ii) the impact of the new regulation needs to be 'significant', 'specific to everyday life of communities in Northern Ireland', and 'liable to persist'. A third democratic guarantee was added that was not negotiated with the EU but a decision by the UK Government: *the 'Applicability Motion'*. This is the requirement for cross-community consent of MLAs to be given before a new EU law can be added to the Protocol/Windsor Framework.

The Windsor Framework has been steadily implemented from 1st October 2023, with the EU emphasising the fact that flexibilities must be accompanied by safeguards (e.g. UK sharing data on goods' movement with the EU).

Safeguarding the Union deal: what has legally changed

Despite the hopes of both the EU and the UK, DUP opposition to the Windsor Framework remained firm and focused on ‘seven tests’ it set in July 2021 to measure any post-Brexit arrangements. These included ‘no new regulatory borders’ between NI and the rest of the UK, no border in the Irish Sea, and giving ‘the people of NI a say in the laws which govern them’. The DUP was in negotiation with the UK Government from summer 2023 to secure further concessions on these grounds. The fact that negotiations with the EU had firmly closed, however, meant that what could be changed was limited, i.e. the Windsor Framework remained the legal basis for NI’s post-Brexit position, including for the movement of goods from the rest of the UK.

The DUP have made greater claims than the UK Government regarding the deal, but both have asserted that it makes significant adjustments to the Windsor Framework in addressing unionist concerns. In so doing, they have stressed new protections for the Act of Union, new guarantees for the UK internal market, and new measures to boost intra-UK trade and cooperation.

There are three pieces of legislation underpinning the deal: the [Windsor Framework \(Constitutional Status of Northern Ireland\) Regulations 2024](#), the Windsor Framework (Internal Market and Unfettered Access) Regulations 2024, and the Windsor Framework (Marking of Retail Goods) Regulations 2024. The first amends Section 38 of the *European Union (Withdrawal Agreement) Act 2020* – the Act underpinning the legal effect in the United Kingdom of the Protocol/Windsor Framework. It does so by asserting that the Windsor Framework is without prejudice to the constitutional status of Northern Ireland, including the power of the UK Parliament to make laws for Northern Ireland. The reference to ‘Northern Ireland’s part in the economy of the United Kingdom, including its customs territory and internal market’ is also new.

Furthermore, an amendment to Section 13 of the *European Union Withdrawal Act (2018)* requires a Minister in charge of a Bill to make a *statement* if the Bill, as introduced into either House of Parliament, contains provision which, if enacted, would affect trade between Northern Ireland and other parts of the United Kingdom. Notably, even if the Minister cannot claim that it will not negatively impact such trade, the Government still may wish to proceed with it.

Also under this regulation is a change to the *Northern Ireland Act (1998)* which expands the scope of the Independent Review that is to happen after the Democratic Consent Vote which will take place in the NI Assembly in December 2024. Now the review is to consider the impact of the Windsor Framework on the constitutional status of Northern Ireland and the operation of the single market in goods and services between NI and the rest of the UK.

A second on the [UK Internal Market and Unfettered Access](#) is an amendment to the *United Kingdom Internal Market Act 2020* and the *Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020*. It prohibits the Government from ratifying a ‘Northern Ireland-related agreement with the European Union’ that would ‘create a new regulatory border between Great Britain and Northern Ireland’. It also revised the definition of ‘qualifying goods’ to mean that only agrifood goods connected to registered NI food and feed operators will qualify for unfettered access to the GB market. This is intended to prevent goods produced in the Republic of Ireland from using NI as a gateway into GB. Furthermore, *new statutory guidance* may be issued under section 46 of the *UK Internal Market Act 2020* to ‘set out how public authorities should have special regard to Northern Ireland’s place in the UK internal market’.

The third regulation on the [Marking of Retail Goods](#) remains in draft form as the results of a public consultation are considered. This is on the ‘*not for EU*’ labelling of agri-food goods, which the UK Government is proposing to rollout across all the UK, to ensure that it the required labelling is not a cost solely associated with offering goods for sale in NI.

The new Safeguarding the Union bodies

There are five new bodies established by the deal:

- an Independent Monitoring Panel
- a UK East-West Council
- Intertrade UK
- A Horticulture Working Group
- A Veterinary Medicines Working Group

There is much that is unknown about these bodies, not least in terms of the scale of the challenge that they will have to address, the effects of their operation, and their interaction with other bodies. However, the Safeguarding the Union command paper sets out their essential purpose and their anticipated outputs as well as their membership (see Table 1, below).

The UK East-West Council has already had its [inaugural meeting](#) (26 March 2024) in London. It was chaired by the Secretary of State for Levelling Up and Minister for Intergovernmental Relations and included Northern Ireland Office ministers as well as the First and deputy First Minister for Northern Ireland, and the NI Minister for the Economy and Communities Minister. Its ambitions to support ‘connectivity between business, skills, trade, and innovation within the UK, and connections across other parts of the UK to Northern Ireland’ and to ‘drive UK-wide engagement on the development and sharing of existing clusters of excellence’ presumably mean that its membership would usefully extend beyond Levelling Up, NIO and NI Executive ministers in future. However, the precise engagement with other parts of the UK is as yet unclear.

It is perhaps worth noting [clarification on the role of these new bodies](#) and their relationship to existing structures given by NIO Minister of State Steve Baker to the House of Lords sub-committee on the Windsor Framework (27 March 2024) (emphasis added):

The new bodies and structures set up following Safeguarding the Union *do not change the operation of the Common Frameworks* in any way, which will continue to focus on dedicated areas of devolved policy and how they are managed ...The new bodies and structures under the Safeguarding the Union package have an entirely different and broader focus... For example, Intertrade UK and the Independent Monitoring Panel will advise the Government and hold it to account on Windsor Framework matters, as well as more broadly supporting industry and business to trade *across the UK*.

Similarly, the East-West Council is a distinct new structure to identify opportunities for deepening connections *between Northern Ireland and the rest of the UK* in areas such as trade, transport, education and culture, including between the Government, *devolved administrations* and businesses ...This does not in any way undermine or conflict with the work of the *Interparliamentary Union*, which of course is about developing relationships with a Parliamentary dimension.

What changes in practical terms?

One new commitment in *Safeguarding the Union* that does go beyond the Windsor Framework is set out as a ‘*UK Internal Market Guarantee*’. This is the Government’s commitment ‘that more than 80% of all freight movements from Great Britain to Northern Ireland [will] take place under the UK internal market system [as the Green Lane is now known as], with independent scrutiny’. The rationale for such a claim is predominantly one of symbolism.

Also symbolically significant is the Safeguarding the Union commitment that there will be no *Border Control Post built at Cairnryan*. This underlines the promise of unfettered NI access into GB. However, the lack of a Border Control Post does raise the question of how to manage Irish/EU goods that enter GB via NI. For this, future actions are promised: ‘we will develop an approach to checks and formalities on non-qualifying goods entering GB via Cairnryan’. This approach and its consequences will need to be followed carefully.

In practical terms, ambitions for streamlining the movement of goods from GB to NI overlap with those that the UK Government has for the development of its Border Target Operating Model. One example is the promise of ‘streamlined customs’, e.g. with individual profiles for those using the Trader Support Service (TSS) based on commercial data rather than commodity codes, and a commitment ‘to harness future *technological advances*’ for which ‘trial work’ is already ‘underway with private sector partners’ (Command paper, paragraph 102).

The impact on Northern Ireland

Public opinion broadly welcomed the Safeguarding the Union deal in that it saw the Assembly and Executive function once more. The [Testing the Temperature](#) poll (LucidTalk for Queen’s University) taken the first weekend after the deal saw almost three-quarters of voters (73%) agree the DUP was right to return to Stormont, although ‘Strongly unionist’ voters are split (44% agree, 42% disagree). The lack of loyalist protests on the return of the Assembly (and after the resignation of the DUP leader Jeffrey Donaldson, who is so closely associated with the deal) bodes well for unionist commitment to the functioning of the institutions and, cautiously, the continuing operation of the Windsor Framework post-deal. That said, only 29% of DUP voters believe the Safeguarding the Union deal secures Northern Ireland’s position in the United Kingdom for the foreseeable future (a claim made by the UK government).

Overall, polling data from the Post-Brexit Governance project at Queen’s shows that the Windsor Framework saw a slight uptick in support for the Protocol among NI voters, and the Safeguarding the Union deal saw a slight downturn in opposition to it (see Figure 1). There is a sense that the DUP has brought its opposition to the Windsor Framework inside the NI Assembly.

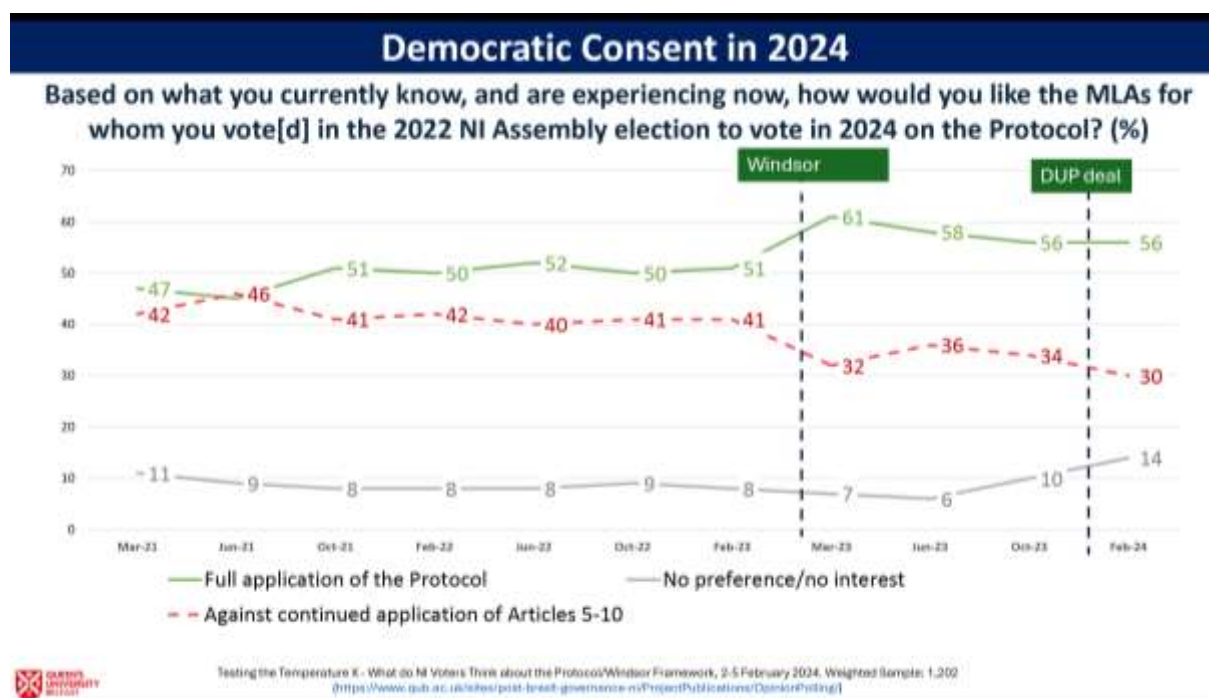


Figure 1. Time series data on NI voters’ views on whether they would like their MLAs to vote in support of continuing Articles 5-10 of the Windsor Framework in the Democratic Consent Vote

A test for the functioning of the NI Assembly has come in relation to the exercise of the Applicability Motion (which requires cross-community consent for new EU law to be added to the Windsor Framework). This has happened once already ([19 March 2024](#)) where DUP opposition centred very much on the principle rather than the practical effects of the law in question (on geographical indicators). Notably, the UUP also voted against the application, but on the grounds that they had had too little time to consider it. However, [the next Applicability Motion](#) will be expected to be passed because, as deputy First Minister Emma Little-Pengelly has noted, if NI does not comply with the new EU law on organic pet food, it will find itself out of line with the rest of the UK (which already applies such standards). This is one indication of the complexity of the situation under the Windsor Framework and a ‘thin’ UK-EU trade relationship.

Implications for the TCA

- Divergence between NI and the rest of the UK is not prohibited by the Safeguarding the Union deal. The deal introduces means of monitoring and managing divergence instead. The scope for such divergence is considerable at the moment under the terms of the TCA, especially if there is another round of reductions of retained EU law.
- The prohibition of new UK-EU agreements which would introduce a new regulatory border between NI and the rest of the UK means that there are grounds for any UK agreement with the EU to be seeking closer relations.
- Although the Safeguarding the Union command paper states that ‘the Windsor Framework applies only in respect of the trade in goods’ (para 46) this is quite incorrect. Article 2 requires continued application of the European Convention on Human Rights in NI. If the UK leaves the ECHR, or exhibits ‘serious and systemic’ deficiency in human rights protections and the rule of law, this will not only raise problems under Article 2 but also risk the TCA, specifically the suspension or termination of [Part 3 of the TCA](#) (law enforcement and judicial cooperation in criminal matters).

Implications for Scotland

- The evolution and operation of the new bodies, particularly the East-West Council and Intertrade UK beneath it, is intended to affect trade, transport, education and culture across all parts of the UK.
- The approach taken to monitor goods entering GB via Cairnryan that don’t qualify for unfettered access but yet don’t pass through border control posts is yet to be set out by the UK Government. Its weaknesses will be seen in the entry of EU goods into Scotland that may be avoiding UK border controls elsewhere.
- The effectiveness of monitoring and managing divergence, as committed to by the Safeguarding the Union deal (including the work of the Independent Monitoring Panel), depends on how the process involves and informs devolved authorities.

Questions to consider re: Northern Ireland

- What have been the experiences so far in the roll-out of the Windsor Framework? How have these differed between sectors? What are the key challenges in the next phases?
- What are the opportunities and risks of an all-UK application of ‘not-for-EU’ labelling approach, as per the draft regulation and recent public consultation?
- Have the new bodies under the Safeguarding the Union deal made an impact yet?
- What difference would a UK-EU veterinary agreement make to the UK Internal Market and to UK trade?
- What has been the impact of the UK Border Target Operating Model rollout – and its effective suspension – to date?

Table 1. New bodies to be established (according to the Command Paper) (Source: [Hayward and Phinnemore, 2024](#))

Membership	Purpose	Outputs
Independent Monitoring Panel		
<p>Membership to reflect the need for expertise in trade and business, but also the broader political context [recognising that the operation of the Framework goes beyond technical trade issues and also must uphold the economic rights of the people of Northern Ireland]</p> <p>The Government shall ensure there is a dedicated secretariat, resourced to ensure the effective functioning of the IMP.</p> <p>To be appointed in early 2024.</p>	<ul style="list-style-type: none"> - To oversee the UKIM Guarantee - To provide oversight of the implementation of new arrangements so that Government and other authorities are held to account for delivering it in a pragmatic, proportionate way without gold plating. - To hold UKG to account re: technological advances - To consider and report on the delivery of the WF against the tests set in the Command Paper - Support the work of the Independent Review after Democratic Consent vote 	<ul style="list-style-type: none"> - The ability to challenge and test Government departments and agencies. - Access to Government data/information on the overall programme of operational implementation and its key delivery elements - Able to engage with officials from Government departments - To report ‘regularly’ (every 6 month period?) - To make recommendations in respect of the operational implementation of the Framework - If UKIM Guarantee not met, to provide whether this indicates decline/detriment to UKIM movement of goods - If it does, UKG to respond ‘swiftly’, inc. any immediate steps to remedy the situation
UK East-West Council		
<ul style="list-style-type: none"> - Ministers and experts from across all parts of the UK and from a variety of sectors (including business and industry and trade organisations) - Key representatives from Government, business and the education sector in NI and GB 	<ul style="list-style-type: none"> - To identify opportunities for deepening connections between Northern Ireland and the rest of the UK (e.g. trade, transport, education and culture) - To act in an advisory function to drive engagement to develop and share existing clusters of excellence 	<ul style="list-style-type: none"> - Work will be driven by targeted ‘missions’ designed to tackle some of NI’s most challenging issues - A public annual report - With supporting analysis to identify concrete actions that business, education, or Government should take to improve growth in Northern Ireland and across the UK

	- To raise the profile of NI in decision-making in business and the Government	
Intertrade UK		
A configuration of the East-West Council with a specific remit to promote trade within the UK.	<ul style="list-style-type: none"> - To promote the full extent of the UK’s market to businesses and traders - To help to counter any misconceptions or confusion businesses and traders in Great Britain have about providing goods and services in NI 	<ul style="list-style-type: none"> - To provide advice and facilitate businesses across the UK boosting internal trade ‘and activities’ - To conduct and publish research or other activity designed to advance intra-UK trade - To consider where use of red lane could be moved within UKIM systems. - To provide information and clarification for businesses to simplify and reduce unnecessary burdens for NI goods/services in GB - To advise on how to boost port connections, and in particular between Northern Ireland, Scotland and England - To advise on how we can ensure that important UK-wide regulatory bodies – such as MHRA and the Veterinary Medicines Directorate - have a sufficient, dedicated presence in NI
Horticulture Working Group		
Inc. Industry reps	To address the movement of seeds to NI consumers	<ul style="list-style-type: none"> - To be ‘rapidly established’ and report in Autumn 2024 - UKG to issue guidance on ‘remaining issues’
Veterinary Medicines Working Group		
Elected representatives, farming and industry representatives as well as legal and trade experts	To advise the Government on the flexibilities that are needed by farmers, industry and animal owners	This has already been established, co-chaired by NIO Minister Steve Baker and Lord Douglas-Miller. Invitations were issued in March 2024 to include experts and politicians.