



CENTRE FOR CROSS BORDER STUDIES

# The Windsor Framework:

What could it mean for North-South  
and East-West cooperation and  
relations?

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## Contents

Executive summary .....	2
Introduction .....	4
1. Reaching the Windsor Framework .....	4
2. (An aside) – The Protocol and the Windsor Framework: which is which? .....	5
3. Enhancing the voice of the Strand 1 institutions of the Good Friday/Belfast Agreement....	6
3.1. Democratic consent in Northern Ireland: Article 18 .....	6
3.2. The Stormont Brake .....	7
3.3. The applicability motion .....	10
3.4. The Windsor Framework Democratic Scrutiny Committee.....	11
4. Speaking out early and based on evidence .....	12
4.1. EU engagement with Northern Ireland .....	12
4.2. UK Government engagement with Northern Ireland.....	12
4.3. Gathering the evidence: consulting with civil society .....	13
5. The Windsor Framework as evidence of the need for “border-proofing” .....	15
Conclusion.....	16

## Executive summary

The Windsor Framework marks not only a welcome and positive change in UK-EU relations but also a long awaited agreement on the resolution of issues regarding the implementation of the Protocol on Ireland/Northern Ireland.

However, for the full potential of the Windsor Framework to be realised, those good relations need to be maintained and a functioning Executive and Assembly in Northern Ireland needs to be re-established.

In the area of democratic consent, a number of additional measures have been introduced, including the Stormont Brake to consult the Assembly on updates or amendments to existing EU law in Northern Ireland, an applicability motion to consult the Assembly on any relevant *new* EU acts, and a Windsor Framework Democratic Scrutiny Committee at Stormont with the main purpose of examining and considering new and replacement EU acts.

Uncertainty remains as to what the legal effect of successfully triggering the Stormont Brake will actually be. As colleagues have observed, triggering the brake would not disapply an existing EU law in NI but simply prevent it being updated here, creating the potential scenario where NI becomes the only jurisdiction applying a now outdated law – one that does not apply in Great Britain, nor in that form, in the Republic of Ireland.

In addition, the European Commission has committed to enhanced and timely engagement with Northern Ireland stakeholders including engagement on the Commission's Work Programme, targeted consultations, and a dedicated overview of Northern Ireland stakeholder's input in relevant impact assessments for new EU policy initiatives.

However, it is also important that Northern Ireland's existing assets are fully utilised, including the Northern Ireland Executive Office in Brussels which has enormous untapped potential as a valuable channel of communication between Brussels and Belfast.

Pre-emptive engagement by politicians and officials in Northern Ireland with developments in EU policy and legislation could go a long way towards alleviating potential political and community tensions as well as the creation of uncertainty for businesses and citizens that could arise if political parties in Northern Ireland decided to trigger the Stormont Brake.

There are numerous mechanisms for early engagement on emerging issues and, indeed, one of the conditions required of MLAs wishing to use the Stormont Brake is to have made all reasonable use of applicable consultation processes provided by the European Union for new EU acts relevant to Northern Ireland.

However, it would be misleading to suggest that only EU policies could have an impact on the operation of the Protocol/Windsor Framework or, crucially, on Northern Ireland's relations with the Republic of Ireland and/or the rest of the United Kingdom.

In a marked change of tone from the original Protocol, the Windsor Framework highlights the UK's 'in-built capacity for divergence' post-Brexit (paragraph 54 of the UK Government

Command Paper), examples of which can already be seen and felt among organisations and individuals operating on a cross-border basis on the island of Ireland.

Just as engagement with Northern Ireland stakeholders needs to take place regarding EU policies and legislation, the same applies to UK Government policies and legislation that would result in divergence – either divergence between Great Britain and Northern Ireland, or between Northern Ireland and the Republic of Ireland and the rest of the EU.

In light of current and future UK divergence, it is vital that the UK Government adopts a practice of “border-proofing” to assess the cross-border impact of potential policies and legislation and how they may impact on both North-South and East-West flows and relations.

Such a requirement already exists in the Republic of Ireland, and has the potential to preemptively mitigate or prevent avoidable, detrimental impacts for organisations and individuals on these islands.

The quality of engagement with businesses and civil society will determine the effectiveness of Northern Ireland’s political institutions’ engagement with the European Commission and the UK Government. It will also be the foundation of the European Commission’s and the UK Government’s proper monitoring of the impacts of the operation of the Protocol/Windsor Framework.

However, despite the joint legal commitment by the UK and EU to ‘maintain the necessary conditions for continued North-South cooperation’ under Article 11 of the Protocol/Windsor Framework, proposals on engagement are limited to businesses and civic society in Northern Ireland and do not extend to those who trade or cooperate with Northern Ireland from the Republic.

It is implausible to think that conditions for cooperation can be maintained via consultation with only one half of the stakeholders effected.

To exploit the potential of the Windsor Framework, the opportunities it presents must be fully utilised in good faith, and in a manner conscious of the totality of relations represented within all three strands of the Belfast/Good Friday Agreement.

## Introduction

The purpose of this Briefing Paper is to consider the Windsor Framework from the perspective of cooperation and relations in their North-South and East-West dimensions – between Northern Ireland and the Republic of Ireland, and between the island of Ireland and Great Britain. In considering what the Framework means for relations within and across these islands, we will rely on an analysis of some of the associated official documents published by the UK Government and the European Commission, available on the dedicated page on the [UK Government website](#) and on the [European Commission's website](#). These documents include a joint UK-EC political declaration on what the Windsor Framework represents, joint declarations and joint decisions, draft recommendations, as well as unilateral declarations, proposed regulations, position papers and statements.

## 1. Reaching the Windsor Framework

The joint announcement on 28 February 2023 by the UK Prime Minister, Rishi Sunak, and the President of the European Commission, Ursula von der Leyen, that the UK and the EU had reached an agreement on how to resolve issues regarding the implementation of the Protocol on Ireland/Northern Ireland marks a significant and positive change in UK-EU relations. This change in relations is stressed at various points in the [Political Declaration by the European Commission and the Government of the United Kingdom](#) published on the same day, which concludes:

The new way forward on the Windsor Framework marks a turning point in how both the United Kingdom and the European Union will work together collaboratively and constructively. It also reflects the full commitment of both to protect the Good Friday or Belfast Agreement of 10 April 1998 and its subsequent implementation agreements and arrangements (p.4).

Cooperation is built on the trust that develops through relations working from the outset for mutually beneficial outcomes. Prior to the joint work that led to the Windsor Framework, UK-EU relations were in a poor state where trust was in very short supply, not least due to the UK Government's introduction in June 2022 of the [Northern Ireland Protocol Bill](#) and the EU's retaliatory measures. The absence of trust between the UK-EU was reflected in the responses to the Centre for Cross Border Studies' quarterly surveys on the conditions for North-South and East-West cooperation, where the political context was consistently seen as unsatisfactory for cooperation.<sup>1</sup>

The improvement in UK-EU relations that allowed both parties to reach the Windsor Framework is to be welcomed. Indeed, the concluding paragraph of the UK Government's Command Paper, [The Windsor Framework: A new way forward](#), stands as a clear signal of how far those relations have improved and how mutual trust is being restored:

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<sup>1</sup> The quarterly surveys began in the first quarter of 2021, coinciding with the end of the Brexit transition period and the beginning of the operation of the Protocol on Ireland/Northern Ireland. The Centre has published analyses of the results of each quarterly survey, available on the [Briefing Papers](#) section of our website, as well as a [report](#) looking at the overall trends in 2021. These quarterly surveys are ongoing, with the support of the Department of Foreign Affairs' Reconciliation Fund.

Following this deal the Government and the EU are both firmly committed to a positive, constructive relationship as partners. It is in both our interests to resolve and move past concerns with the Protocol, to focus instead on our shared priorities in Europe and on the global stage. With the Windsor Framework, the UK and EU have found a sustainable basis on which we can consider those concerns to have been addressed. The Government will therefore not be proceeding with the Northern Ireland Protocol Bill. In turn, the EU will not proceed with the seven separate legal actions it has launched against the United Kingdom – on issues from parcels to pets – reflecting the shared desire for a positive bilateral relationship now and into the future (p.26).

It will be essential for both the UK and EU to devote constant attention to sustaining and building on their more ‘positive bilateral relationship now and into the future’ as they formally ratify and implement the Windsor Framework. There will no doubt be challenging moments as each side seeks to put into place what will be necessary to make the Framework a reality, whether that be the passing of legislation on the UK side, or getting agreement from 27 Member States and the European Parliament on the EU side. However, such challenges can be overcome if the positive relationship and mutual trust are maintained, and the ability to fully exploit the benefits of North-South and East-West cooperation depend on it.

## 2. (An aside) – The Protocol and the Windsor Framework: which is which?

According to the UK Government’s [Command Paper](#), the Windsor Framework ‘fundamentally amends the text and provisions of the original Protocol to uphold Northern Ireland’s integral place in the United Kingdom, address the democratic deficit and set out a new way forward’ (p.3). The ‘original Protocol’ is the Protocol on Ireland/Northern Ireland that forms part of the 2019 [Withdrawal Agreement](#), and is the jointly agreed legal basis for the form of the UK’s departure from the EU that entered into force on the 1<sup>st</sup> of February 2020.

As part of that Withdrawal Agreement (Article 164), a Joint Committee was established, ‘comprising representatives of the [European] Union and of the United Kingdom, [...] co-chaired by the Union and the United Kingdom’.<sup>2</sup> The Joint Committee’s overarching responsibility is ‘for the implementation and application’ of the Withdrawal Agreement, which includes the Protocol on Ireland/Northern Ireland. It is this Joint Committee that has issued a [decision](#) on what arrangements need to be made in order to implement the Windsor Framework. It begins by setting out its legal basis, which relies principally on parts of Article 164 of the Withdrawal Agreement and parts of Articles 5 (dealing with customs and the movement of goods) and 8 (dealing with VAT and excise) of the Protocol on Ireland/Northern Ireland. Therefore, this decision by the Joint Committee makes clear that the amendments to the Protocol it goes on to list are made possible by the Protocol itself and the overall Withdrawal Agreement.

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<sup>2</sup> The current co-chairs are the UK’s Foreign Secretary, James Cleverley, and the European Commission’s Vice-President, Maroš Šefčovič.

The decision also makes reference to the [joint declaration](#) on the Windsor Framework by the Joint Committee. This short joint declaration states that ‘the Protocol on Ireland/Northern Ireland (“the Protocol”), as amended by [the] Joint Committee decision, should now be known as the “Windsor Framework”’, and that the Protocol ‘may also be referred to as the “Windsor Framework” in the domestic law of the [European] Union and the United Kingdom’.



Therefore, with the amendments to the Protocol on Ireland/Northern Ireland having been formally adopted by going through the relevant processes in both the EU and the UK,<sup>3</sup> it can now be called the Windsor Framework. It could be argued that this change of name at least superficially minimises the all-island dimension of the Protocol, which the image on the cover of the UK Government’s Command Paper could be said to further obscure. However, the Protocol’s contents remain largely unchanged apart from where amendments are to be made as a result of the Windsor Framework. Crucially, in this respect, Article 11 of the Protocol remains unchanged, committing both parties ‘to maintain the necessary conditions for continued North-South cooperation’.

### 3. Enhancing the voice of the Strand 1 institutions of the Good Friday/Belfast Agreement

#### 3.1. Democratic consent in Northern Ireland: Article 18

Article 18 of the Protocol on Ireland/Northern Ireland is entitled “Democratic consent in Northern Ireland”. In effect, it gives the Northern Ireland Assembly at periodic intervals the opportunity to give its democratic consent for the continued operation of Articles 5 to 10 of the Protocol, now as amended by the Windsor Framework.<sup>4</sup> Articles 5 to 10 rely on compliance with relevant EU law and with the European Union’s Court of Justice, and are the basis for Northern Ireland’s access to the EU’s Single Market for goods. If the Assembly does not give its consent for the continued operation of one or more of these Articles, they (and any other Articles in the Protocol on which they rely) will cease to apply two years after the Assembly has voted. ‘In such a case’, Article 18(4) states, ‘the Joint Committee shall address recommendations to the [European] Union and to the United Kingdom on the necessary measures, taking into account the obligations of the parties to the 1998 Agreement’.

The Assembly (presuming it has resumed functioning) is due to have its first vote on Articles 5 to 10 in 2024, four years after the end of the Brexit transition period, which was on the 31<sup>st</sup> December 2020. If the Assembly votes to retain Articles 5 to 10 of the Protocol, the next

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<sup>3</sup> The EU Member States unanimously agreed to the Windsor Framework at a meeting of the General Affairs Council on 21 March 2023, the House of Commons voted in favour of the Draft Windsor Framework (Democratic Scrutiny) Regulations 2023 on 22 March 2023, and the EU-UK Joint Committee formally adopted the Windsor Framework on 24 March 2023.

<sup>4</sup> Articles 5 to 10 deal with, respectively: customs and movement of goods; protection of the UK internal market; technical regulations, assessments, registrations, certificates, approvals and authorisations; VAT and excise; the Single Electricity Market; and state aid.

time it has a vote will depend on how the vote was obtained. If it was on the basis of a simple majority of Members of the Legislative Assembly (MLAs) present and voting, but without cross-community consent, then the next vote will be in four years. If it was on the basis of cross-community consent, then the next vote will be in eight years. Cross-community consent is defined in Article 18 of the Protocol as a majority of MLAs present and voting, including a majority of the unionist and nationalist designations present and voting, or a weighted majority (60%) of MLAs present and voting, including at least 40% of each of the unionist and nationalist designations present and voting.<sup>5</sup>

However, it should be noted that in 2019 the UK Government published a [unilateral declaration](#) on the operation of the democratic consent mechanism under Article 18 whereby, if the Northern Ireland Assembly votes in favour of the continued application of Articles 5 to 10 of the Protocol by a simple majority, without cross-community consent, the UK Government commits to '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' (paragraph 7). This 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'. This commitment is restated through another UK Government [unilateral declaration](#) under the Windsor Framework.

Article 18 of the Protocol remains part of the Windsor Framework. When Boris Johnson as UK Prime Minister first proposed in October 2019 that the Northern Ireland Assembly should have the ability to give its consent on an ongoing basis to the application of EU laws in Northern Ireland, the Centre for Cross Border Studies noted in a [Briefing Paper](#) that this could 'give rise to political and community tensions and create intolerable uncertainty for businesses and citizens' (p.7). These concerns remain, and they are particularly conscious of how political instability in Northern Ireland and of the Strand 1 institutions under the Good Friday Agreement impact on North-South and East-West relations.

### 3.2. The Stormont Brake

The Windsor Framework provides for an additional means for the Northern Ireland Assembly to have a voice. Article 2 of the Joint Committee's [decision](#) on the Windsor Framework amends Article 13 of the Protocol in order to allow the Northern Ireland Assembly to vote on the application of any *new* EU act that amends or replaces an existing EU act that forms part of the Protocol. According to the UK Government's [Command Paper](#), the Windsor Framework:

[E]stablishes a powerful new democratic safeguard – a Stormont Brake – rooted in the principles of the Belfast (Good Friday) Agreement, where the goods rules applied in Northern Ireland are amended or replaced. Under the Protocol as it stands, those rules are applied automatically under Article 13(3). But the Stormont Brake will change that, giving the institutions, once restored, a genuine and powerful role in the decision on whether or not significant new goods rules impacting on everyday

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<sup>5</sup> The [Northern Ireland Act 1998](#) was amended through the passing of [The Protocol on Ireland/Northern Ireland \(Democratic Consent Process\) \(EU Exit\) Regulations 2020](#) in order to put this voting mechanism into legislation.



life in Northern Ireland should apply. This is more than simply a say in the rules that are made: the Brake would enable a sovereign UK Government decision to veto the application of a new rule – and the accompanying ECJ interpretation and oversight – to Northern Ireland permanently (p.23).

The Stormont Brake mechanism was passed into legislation on 22 March 2023, with MPs in Westminster voting in favour of the [Windsor Framework \(Democratic Scrutiny\) Regulations 2023](#), although with MPs from the Democratic Unionist Party voting against it.<sup>6</sup> This piece of secondary legislation makes amendments to the Northern Ireland Act 1998, adding the Stormont Brake to the already existing powers of the Northern Ireland Assembly to vote periodically on Articles 5 to 10 of the Protocol.

Under this new legislation, 30 MLAs (the minimum number required), from at least two different political parties, which could be of the same community designation (i.e. nationalist or unionist), may ‘seek to prevent a replacement EU act from applying under the Framework’ (although bearing in mind that the primary focus is on the amendment or updating of rules governing the movement of goods as they apply in Northern Ireland under the Protocol/Windsor Framework). They do so by providing the Presiding Officer (the Northern Ireland Assembly Speaker) ‘with a written notification which gives detailed reasons for seeking to prevent the application of that EU act’, which the Presiding Officer then passes on to the Secretary of State for Northern Ireland.

However, there are some important requirements that need to be met in order for any notification to be taken forward. These include the requirement that a notification by MLAs must be made to the Presiding Officer ‘no later than ten working days before the end of the scrutiny period’, with the scrutiny period being ‘the period of two months beginning with the day on which a replacement EU act is published’. If the Secretary of State receives the notification from at least 30 MLAs from two parties or more within this time period, its validity also depends on whether it is considered to have complied with the following additional requirements, as set out in the UK’s unilateral declaration on the involvement of the institutions of the 1998 Agreement, which is annexed to the [Decision of the Joint Committee](#) of the Withdrawal Agreement:

1. The ‘Northern Ireland Executive has been restored and become operational, including with a First and Deputy First Minister in post, and the Northern Ireland Assembly has been in regular session’.
2. MLAs ‘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’.
3. MLAs will have to show ‘in a detailed and publicly available written explanation’ that:
  - i. ‘the notification is only being made in the most exceptional circumstances and as a last resort, having used every other available mechanism’;<sup>7</sup>

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<sup>6</sup> 515 MPs voted in favour, with 29 voting against. See [Draft Windsor Framework \(Democratic Scrutiny\) Regulations 2023 - Commons' votes in Parliament - UK Parliament](#).

<sup>7</sup> This is said to be ‘on the same basis as the separate “Petition of Concern” process within the 1998 Agreement, as updated through the New Decade, New Approach Agreement in 2020’.

- ii. the new EU act ‘significantly differs, in whole or in part, from the content or scope of the EU act it amends or replaces’, and the new EU act ‘would have a significant impact specific to everyday life of communities in Northern Ireland that is liable to persist’;<sup>8</sup> and
- iii. ‘MLAs have sought prior substantive discussion with the UK Government and within the Northern Ireland Executive to examine all possibilities in relation to the [European] Union act; taken steps to consult businesses, other traders and civic society affected by the relevant [European] Union act; and made all reasonable use of applicable consultation processes provided by the European Union for new [European] Union acts relevant to Northern Ireland’.

If the Secretary of State considers that all of these conditions have not been met, and that the notification from the MLAs is not being accepted, this decision must be communicated to the Assembly’s Presiding Officer ‘without undue delay’. If, on the other hand, all of the conditions have been met, the Secretary of State ‘must accept’ the notification before the end of the scrutiny period (two months from the day a new EU act was published). In these circumstances, and still within the scrutiny period, the UK Government ‘must give the European Commission written notification [...] of any notification from Members of the Assembly which has been accepted by the Secretary of State’.<sup>9</sup>

At this point, and according to the [House of Commons Library Research Briefing on the Stormont Brake](#), ‘If the Brake is triggered, then the law will cease its application in Northern Ireland after two weeks’ (p.16). The [Explanatory Memorandum on Windsor Framework \(Democratic Scrutiny\) Regulations 2023](#) adds that ‘subsequently the UK Government would have a veto power in the [EU-UK] Joint Committee as to whether the rule should be disapplied permanently’ (paragraph 7.4). However, given that the EU law within the scope of the Stormont Brake is law that amends or updates existing EU law that applies to Northern Ireland under the Protocol/Windsor Framework, there is some uncertainty as to what the legal effect of successfully triggering the Brake will actually be. The House of Commons Library Research Briefing Paper on the Stormont Brake cites the work of Dr Viviane Gravey and Dr Lisa Claire Whitten, who ‘observed that if the Brake is successfully applied then presumably the relevant EU law would continue to apply “but in its unamended or non-updated version”’, and noting how this “raises the prospect of stagnant, legacy EU laws [...] continuing to apply in Northern Ireland where they neither apply in Great Britain nor, in the same form, in Ireland” (p.17).

After it has been triggered, and once the relevant EU act has been suspended, the EU can challenge the use of the Brake through an arbitration panel. The arbitration panel could rule

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<sup>8</sup> These requirements are set out in Article 13(3a) of the Windsor Framework. In fact this is an additional sub-paragraph added to what was Article 13(3) of the Protocol on Ireland/Northern Ireland.

<sup>9</sup> If the EU considers that the UK’s reasons for triggering the Stormont Brake are not sufficient (e.g. that the new EU act *doesn’t* differ significantly from the EU act it is replacing or amending, or that it *wouldn’t* have ‘a significant impact specific to everyday life of communities in Northern Ireland that is liable to persist’), then it can ask the UK for further explanation within two weeks of notification of the Stormont Brake being applied, with the UK having a further two weeks to provide that explanation. In these circumstances, the EU law in question will not apply in Northern Ireland on the third day after the UK has provided that further explanation.

that the UK's triggering of the Stormont Brake was *not* in relation to a new EU act that differs significantly from the EU act included in the Protocol/Windsor Framework it is amending or replacing, and that the new EU act *would not* have a significant and enduring impact on everyday life in Northern Ireland. If the arbitration panel makes such a ruling, then the UK and EU will have to agree within 30 days that the new EU law that amends or replaces an existing EU law under the Protocol will begin to apply in Northern Ireland from the first day of the second month after the arbitration panel notifies the UK and EU of its ruling. The arbitration panel can also rule that the UK has not complied with Article 5 of the [Withdrawal Agreement](#), which commits the UK and EU to implementing the Withdrawal Agreement (including the Protocol/Windsor Framework) in 'full mutual respect and good faith'. In this case, there must be 'swift' compliance with the ruling of the arbitration panel.

### 3.3. The applicability motion

While the Stormont Brake can only be applied to an EU act that replaces or amends an existing EU act already included in the Protocol/Windsor Framework, as part of the Windsor Framework the UK Government has introduced an additional means for the Northern Ireland Assembly to make its views known. However, in this case it applies to new EU acts that are to be *added* to the Protocol and would apply to Northern Ireland.

Before the Windsor Framework, the Protocol (Article 13(4)) already had a mechanism for the EU and the UK to consider, through the Joint Committee, the application of new EU laws within a period of six weeks. In this case, where a new EU act 'falls within the scope of the Protocol', but doesn't replace or amend an existing EU act already included within the Protocol, the UK and EU decide whether it should be added to the Protocol or, if agreement can't be reached, they 'examine all further possibilities to maintain the good functioning of this Protocol and take any decision necessary to this effect'. It should be noted that, according to a [Q&A on the Windsor Framework](#) published by the European Commission, if no agreement is reached 'the EU can take appropriate remedial measures'.

What the UK Government has done, as part of the Windsor Framework, is introduce an additional step within this process through its own domestic legislation in Westminster. The [Windsor Framework \(Democratic Scrutiny\) Regulations 2023](#) state that:

A Minister of the Crown *must not* [emphasis added] agree to the adoption of a decision by the Joint Committee to add a new EU act [...] unless the [Northern Ireland] Assembly has indicated support for the application of that EU act by passing an applicability motion.

An applicability motion is a statement by the Northern Ireland Assembly that the new EU act *should be* added to the Protocol/Windsor Framework. Once the UK Government has notified the Assembly that a new EU act is being considered by the EU-UK Joint Committee, 'The First Minister and the deputy First Minister acting jointly may table an applicability motion within a period of two weeks'. Only once that two-week period has expired and the First Minister and deputy First Minister haven't tabled an applicability motion can another MLA do so. Any applicability motion tabled must be voted on and passed by the Assembly with cross-community support within five weeks from when the UK Government notified it that the Joint Committee was considering the addition to the Protocol/Windsor Framework of a new EU act.

However, the [Windsor Framework \(Democratic Scrutiny\) Regulations 2023](#) also state that the UK Government can agree to the inclusion of a new EU act in the Protocol/Windsor Framework even without the Northern Ireland Assembly having given its consent through the passing of an applicability motion. A UK Government Minister can do so if ‘there are exceptional circumstances’, or ‘the new EU act would not create a new regulatory border between Great Britain and Northern Ireland’. The ‘exceptional circumstances’ include the failure of the Northern Ireland Assembly to elect a speaker (effectively preventing the Assembly from functioning), or if there is no First Minister and deputy First Minister in office.

#### 3.4. The Windsor Framework Democratic Scrutiny Committee

Importantly, the [Windsor Framework \(Democratic Scrutiny\) Regulations 2023](#) also establish a new committee within the Northern Ireland Assembly: the Windsor Framework Democratic Scrutiny Committee. The Regulations set out its overarching purpose as being to ‘assist with the observation and implementation of Article 13(3a) and (4) of the Framework’, and that to fulfil its purpose its functions will include:

- Examining and considering new and replacement EU acts;
- Conducting inquiries and publishing reports in relation to replacement EU acts;
- Engaging with businesses, civil society and others in relation to replacement EU acts;
- Engaging with the UK Government in relation to replacement EU acts;
- Engaging with Northern Ireland Executive Ministers and Northern Ireland Government Departments in relation to replacement EU acts;
- Collating and publishing evidence collected as part of its activities; and
- Dealing with other matters it considers to be connected with its purpose or functions.

Although in a limited way, the establishment of this new Committee brings the Northern Ireland Assembly into line with the Scottish Parliament and the Welsh Senedd. In Scotland, the [Constitution, Europe, External Affairs and Culture Committee](#) is responsible for scrutinising the Scottish Government’s EU and international policy, and policy on the UK’s exit from the EU. Among the responsibilities of the Welsh Parliament’s [Culture, Communications, Welsh Language, Sport and International Relations Committee](#) is scrutiny of the Welsh Government’s policies and legislation on international relations. In both the Scottish and Welsh cases, therefore, the scope of their respective committees is much broader than that of the Northern Ireland Assembly’s Windsor Framework Democratic Scrutiny Committee. Given the purpose of this new committee as set out in the legislation, it is unclear to what extent it could consider wider EU policies that could be usefully discussed at the North South Ministerial Council (NSMC). In this regard, it is important to recall that under Strand 2 of the [1998 Belfast/Good Friday Agreement](#), among the responsibilities of the NSMC is ‘to consider the European Union dimension of relevant matters, including the implementation of EU policies and programmes and proposals under consideration in the EU framework’.

## 4. Speaking out early and based on evidence

In order to avoid political and community tensions and the creation of uncertainty for businesses and citizens that could arise if political parties in Northern Ireland wished to trigger the Stormont Brake, it is crucial that politicians and officials engage with developments in EU policy and legislation at the earliest opportunity. Indeed, as noted earlier, one of the conditions that must be met by MLAs wishing to use the Stormont Brake is that they will have ‘made all reasonable use of applicable consultation processes provided by the European Union for new [European] Union acts relevant to Northern Ireland’.

### 4.1. EU engagement with Northern Ireland

As part of the Windsor Framework process, the European Commission published a statement on [Enhanced engagement with Northern Ireland stakeholders](#). Among the enhanced measures for engagement with Northern Ireland stakeholders, the European Commission has committed to:

- ‘Every year, Commission representatives will engage with Northern Ireland stakeholders on the Commission Work Programme for the following year. This will highlight relevant proposals of particular interest for Northern Ireland stakeholders enabling timely engagement with them’;
- ‘Relevant public consultations and/or involvement of Northern Ireland stakeholders in targeted consultations for specific cases will be included on the Protocol webpage’;<sup>10</sup> and
- ‘In relevant impact assessments for new EU policy initiatives, there will now be a dedicated overview of Northern Ireland stakeholders’ input. This will set out their views on the implications of the initiative for Northern Ireland and how they have been taken into account in the final proposal’.

These measures come in addition to proposals published in October 2022 by the European Commission in a [non-paper on Engagement with Northern Ireland Stakeholders and Authorities](#), which included the establishment of fora for structured dialogue ‘to allow for the views of Northern Ireland stakeholders to be expressed in the areas relevant for the implementation of the Protocol’.

However, it is not only important that full use is made of these structures for early engagement with proposed EU policy and legislative initiatives in order to identify potential problems for Northern Ireland that require resolution as early as possible, but also that Northern Ireland’s existing assets are properly exploited. Crucially, in this regard, will be the role played by the [Northern Ireland Executive Office in Brussels](#) which, with proper political direction and resourcing, can prove to be enormously valuable in acting as a channel of communication between Brussels and Belfast.

### 4.2. UK Government engagement with Northern Ireland

But in terms of engagement, this cannot only be with Brussels. Although the arguments are often framed on how policies and legislation developed in the European Union may impact on Northern Ireland, the same principle must apply to policies and legislation developed in

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<sup>10</sup> The [European Commission webpage on the Protocol on Ireland/Northern Ireland](#) includes key documents related to the Protocol and summaries of EU legislation.

Westminster. As noted earlier, among the conditions established by the Windsor Framework for triggering the Stormont Brake is that ‘MLAs [will] have sought prior substantive discussion with the UK Government’. Similarly, one of the functions of the new Windsor Framework Democratic Scrutiny Committee is engagement with the UK Government in relation to replacement EU acts. However, in both these cases the engagement with London is to consider the potential impacts of policy being developed in Brussels, and it is with this focus that the UK Government refers to engagement with Northern Ireland in its Command Paper, [The Windsor Framework: A new way forward](#), as well as in an earlier Command Paper published in July 2021 ([Northern Ireland Protocol: the way forward](#)).

It would be entirely disingenuous to act in the belief that only policies emanating from Brussels could have an impact on the operation of the Protocol/Windsor Framework or, crucially, on Northern Ireland’s relations with the Republic of Ireland and/or the rest of the United Kingdom. Paragraph 55 of the UK Government’s Command Paper, [The Windsor Framework: A new way forward](#), makes this clear from the outset as it refers to the implications of what it notes earlier (paragraph 54) as what will be ‘now considerable underlying regulatory divergence North and South’:

The Government recognises that these changes do 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 Protocol including environmental law, professional qualifications, employment law, procurement, immigration, banking, data and a wide range of services and other rules.

While Brexit has provided the UK the ‘in-built capacity for divergence’, making use of that capacity is likely to directly impact on Northern Ireland. Therefore, just as engagement with Northern Ireland stakeholders, including the Executive and the Assembly, needs to take place regarding EU policies and legislation, the same holds true in relation to UK Government policies and legislation that would result in divergence – either divergence between Great Britain and Northern Ireland, or between Northern Ireland and the Republic of Ireland and the rest of the EU.

#### 4.3. Gathering the evidence: consulting with civil society

Whether it be MLAs wishing to trigger the Stormont Brake, or considering an applicability motion, or whether it be the Windsor Framework Democratic Scrutiny Committee fulfilling its functions, the conclusions reached must be based on relevant evidence. The same requirement applies to the consideration of how proposed UK Government policies and legislation may impact on the operation of the Protocol/Windsor Framework and on Northern Ireland’s North-South and East-West relations.

That evidence will need to be gathered not only from across the Northern Ireland Civil Service in the various Government Departments, but also from those on the ground with direct and practical experience of the areas that may be impacted by the policies or legislation under consideration. This is already made explicit in the [Windsor Framework \(Democratic Scrutiny\) Regulations 2023](#), which refer on several occasions to the need for

consultation with businesses and civil society. The effectiveness of Northern Ireland's political institutions' engagement with the European Commission and the UK Government will be closely dependent on the ability of those institutions to consult with and gather evidence from businesses and civil society.

Equally, the proper monitoring by the European Commission and the UK Government of the impacts of the operation of the Protocol/Windsor Framework will depend on the quality of their engagement with businesses and civil society. As noted earlier, the European Commission has set out its proposals for engagement with stakeholders in Northern Ireland, while the UK Government's Command Paper, [\*The Windsor Framework: A new way forward\*](#), highlights how it has agreed with the EU 'to establish new mechanisms for stakeholder engagement within [joint UK-EU] structures, including business and civic society groups, to ensure their expertise and insight can inform discussions about how the agreement operates in practice' (paragraph 69).

In terms of North-South and East-West cooperation and relations, however, there is a crucial element missing from the current proposals for engagement with business and civic society. The core focus of the Protocol/Windsor Framework is on flows (principally of goods) *from* and *to* Northern Ireland, and how Northern Ireland relates to the rest of the United Kingdom, the Republic of Ireland and, by extension, the rest of the European Union. Indeed, Article 11 of the Protocol/Windsor Framework represents a joint legal commitment by the UK and EU to 'maintain the necessary conditions for continued North-South cooperation'.

And yet, the proposals on engagement are limited to businesses and civic society in Northern Ireland. Of course, the voices of stakeholders in Northern Ireland need to be heard and their concerns addressed by policy and decision-makers. However, businesses in Great Britain send goods to Northern Ireland, as do businesses in the Republic of Ireland and other parts of the EU. A whole range of civic society organisations in the Republic of Ireland (and elsewhere in the EU) cooperate with counterparts in Northern Ireland, as they do with organisations in England, Scotland and Wales. *Their* direct experience of operating under the Protocol/Windsor Framework is also vital to understand how goods are flowing to and from Northern Ireland, and how their collaborations and relations with organisations in Northern Ireland are faring. Where obstacles to those flows, collaborations and relations arise, the solutions to overcoming them can only be found by engaging with relevant stakeholders both within and outside Northern Ireland.

That is why when MLAs are considering triggering the Stormont Brake, or the Windsor Framework Democratic Scrutiny Committee is carrying out its functions, their consultations need to include stakeholders from outside Northern Ireland who trade or cooperate with Northern Ireland. That is why when the European Commission is considering the impacts of new EU policy initiatives, its engagement must include stakeholders from outside Northern Ireland whose relations with Northern Ireland are framed by the Protocol/Windsor Framework. That is also why, when the UK Government is considering new policies that

imply divergence from the EU, it must engage with stakeholders both within and outside Northern Ireland.<sup>11</sup>

## 5. The Windsor Framework as evidence of the need for “border-proofing”

As has already been noted, Paragraph 55 of the UK Government’s Command Paper, [The Windsor Framework: A new way forward](#), makes clear how the UK now has the capability to diverge from the EU and how, in its words, regulatory divergence will ‘create a different legal and practical context on the island of Ireland’. Such divergence could also place Northern Ireland in a context where it is either divergent from the Republic of Ireland or Great Britain.

The issue of potential UK divergence underlines the urgency for the UK Government and officials to adopt the practice of assessing the cross-border impact of potential policies and legislation – “border-proofing”. That requirement already exists in the Republic of Ireland, where the Department of the Taoiseach’s [Cabinet Handbook](#) states that proposals should be assessed in terms of their impacts on North-South and East-West relations, noting moreover that ‘often policy proposals not directly related to North/South relations do have implications for people in Northern Ireland or for all-island co-operation’ (paragraph 3.4).

It is essential, therefore, that the UK Government not only as a co-signatory to the Windsor Framework and the Withdrawal Agreement, but also as co-guarantor of the Good Friday/Belfast Agreement, adopts as a matter of urgency the practice of “border-proofing” of proposed policies, and how they may impact on both North-South and East-West flows and relations. The development of policy and implementing legislation must be done in full knowledge of what it may mean for the totality of relations that the 1998 Agreement encompasses – whether such policy will encourage those relations or create obstacles for them.

As the Centre for Cross Border Studies set out in a [2019 Briefing Paper](#), the case for “border-proofing” is clear. In that Briefing Paper, the example was used of a report from the Regulatory Policy Committee on the 2019 Department for Exiting the European Union’s impact assessment of the European Union (Withdrawal Agreement) Bill. The report concluded:

The present [Impact Assessment] states that the policy will not be reviewed, arguing that the Bill is a purely technical exercise designed to give effect to the Withdrawal Agreement, and does not present a monitoring and evaluation plan. This approach is unusual given that the policy being implemented is both novel and significant. Given the data gaps described in the IA and the explicit commitment to secondary legislation and assessment as time elapses and more information becomes available, the [Regulatory Policy Committee] recommends that the Department set out a monitoring and evaluation plan that would address those gaps and track impacts

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<sup>11</sup> For more on this specific issue, see the Centre for Cross Border Studies’ [Briefing Paper on Civic Society engagement in maintaining the conditions for North-South cooperation](#), its [2021 evidence](#) to the House of Lords European Sub-Committee on the Protocol on Ireland/Northern Ireland’s inquiry on the Protocol, and its [2022 evidence](#) to its follow-up inquiry, as well as the [evidence](#) provided to the same Committee by the Ad-Hoc Group for North-South and East-West Cooperation.



that are currently too uncertain to assess. This is particularly the case for the new Protocol, where appropriate monitoring and evaluation (for example more detailed monitoring of trade flows) could support appropriate decision-making on the future of the Protocol and of the UK's future trade arrangements (p.14).

Businesses and citizens in Northern Ireland, and across these islands, deserve robust consideration by the UK Government of how its proposed policies may impact on the relations that bind them together. That robust consideration requires "border-proofing" of policies.

## Conclusion

The Windsor Framework is the result of a positive sea-change in UK-EU relations. However, the maintenance of those relations, and the return of a functioning Northern Ireland Executive and Assembly, are essential prerequisites to exploit the potential the Windsor Framework represents.

To avoid the unnecessary creation of uncertainty for businesses and citizens and of community tensions in Northern Ireland, it is important that Northern Ireland's Executive and Assembly engage with developments in EU policy and legislation at the earliest opportunity. It is important that potentially problematic issues are identified and resolved upstream, rather than relying disproportionately on the democratic scrutiny processes established by the Windsor Framework.

Consultation with business and civic society must take place not just on the part of Northern Ireland's political institutions, but also on that of the European Commission and the UK Government. That consultation and engagement cannot only be reserved for Northern Ireland stakeholders. It needs to involve stakeholders from outside Northern Ireland who are equally responsible for and encompassed by the totality of relations the Good Friday/Belfast Agreement represents.

As a co-guarantor of the 1998 Agreement and as a joint implementer of the Windsor Framework, the UK Government must exercise its post-Brexit capacity for divergence responsibly and in full knowledge of its impacts. This entails the urgent adoption of "border-proofing" of future policy directions.

It is time that people in Northern Ireland are relieved of the uncertainties they have been facing over recent years, and that they and all those who live on these islands can enjoy the full benefits of what the Good Friday/Belfast Agreement promised 25 years ago.

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