



CENTRE FOR CROSS BORDER STUDIES

The Windsor Framework:

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

A Briefing Note

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This briefing note provides a succinct overview of the Windsor Framework from the perspective of cooperation and relations North-South and East-West – between Northern Ireland and the Republic of Ireland, and between the island of Ireland and Great Britain – which make up Strand Two and Strand Three of the Belfast/Good Friday Agreement. In doing so it considers the implications of the Framework for Strand One – the democratic institutions in Northern Ireland – in the knowledge that no one strand can function independently of the others, and that the totality of relations within and between these islands must be considered at all times.

The briefing note relies 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](#).

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. In a significant move away from what could only be described as a prolonged period of poor UK-EU relations, the UK Government's Command Paper, [The Windsor Framework: A new way forward](#), states:

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 (p.26).

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

Despite the change of name, the content of the Windsor Framework remains largely the same as the Protocol on Ireland/Northern Ireland apart from where amendments were made. While the change of name superficially shifts the emphasis from the agreement's all-island dimension, Article 11 of the Protocol remains unchanged, committing both parties 'to maintain the necessary conditions for continued North-South cooperation'.

In the area of democratic consent a number of existing measures remain and new measures have been introduced. Firstly, Article 18 of the Protocol remains part of the Windsor Framework, meaning that in 2024 the Assembly (if functioning) is still due to have its first vote on Articles 5 to 10, which are the basis for Northern Ireland's access to the EU single market for goods.

The Windsor Framework also restates the UK Government's commitment to the [unilateral declaration](#) it made in 2019 that 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 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' (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' (paragraph 8).

Secondly, the new Stormont Brake allows Members of the Northern Ireland Assembly (MLAs) to voice their objection to the application of any new EU act that amends or replaces an existing EU act that forms part of the Protocol/Windsor Framework, i.e. primarily those acts relating to the movement of

goods. Importantly, included in the process which MLAs must undertake to trigger the brake is the requirement to prove they have ‘taken steps to consult businesses, other traders and civic society affected by the relevant [European] Union act’¹.

Uncertainty remains as to what the legal effect of successfully triggering the Brake will actually be. As colleagues have observed², 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.

Thirdly, the UK Government has introduced a step called an applicability motion to gain the Assembly’s consent for any *new* EU acts that are to be added to the Protocol and would apply to Northern Ireland. However the Government can agree to the inclusion of a new EU act in the Protocol/Windsor Framework even without the Assembly’s consent if the Government decides ‘there are exceptional circumstances’, or that ‘the new EU act would not create a new regulatory border between Great Britain and Northern Ireland’³. These ‘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.

Fourthly, contingent on the Assembly functioning, the Framework establishes a Windsor Framework Democratic Scrutiny Committee at Stormont with the main purpose of examining and considering new and replacement EU acts. It is unclear to what extent this committee could consider wider EU policies that could be usefully discussed at the North South Ministerial Council (NSMC), a central component of North-South cooperation. Under Strand Two of the [Belfast/Good Friday Agreement](#), the NSMC is responsible for considering ‘the European Union dimension of relevant matters, including the implementation of EU policies and programmes and proposals under consideration in the EU framework’.

Finally, the European Commission has committed to enhanced and timely engagement with Northern Ireland stakeholders, including engagement on the Commission’s Work Programme for the following year, 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.

The proposed timeframes for MLAs to consult with UK Government, the EU, and NI stakeholders and trigger a process of objection to amended or replacement EU laws is tight⁴. A desire by political parties to trigger the Stormont Brake, however justified, could understandably lead to political and community tensions and the creation of uncertainty for businesses and citizens here. Pre-emptive engagement by

¹ See 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.

² See the contribution of Dr Viviane Gravey and Dr Lisa Claire Whitten as referenced in [The House of Commons Library Research Briefing Paper on the Stormont Brake](#), pg. 18.

³ See [Windsor Framework \(Democratic Scrutiny\) Regulations 2023](#), paragraph 18.

⁴ A notification by MLAs wishing to trigger the Stormont Brake must be made to the Presiding Officer (Assembly Speaker) ‘no later than ten working days before the end of the scrutiny period’. The scrutiny period is ‘the period of two months beginning with the day on which a replacement EU act is published’. See [The Windsor Framework \(Democratic Scrutiny\) Regulations 2023](#), paragraphs 1 (6) and 11 (3).

politicians and officials in NI with developments in EU policy and legislation could go a long way towards alleviating this.

As outlined, 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 [European] Union acts relevant to Northern Ireland’⁵.

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 UK. In a marked change of tone from the original Protocol, the Windsor Framework highlights the UK’s ‘in-built capacity for divergence’ post Brexit⁶, 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 determine the European Commission’s and the UK Government’s proper monitoring of the impacts of the operation of the Protocol/Windsor Framework. When it comes to effective border proofing, it is invaluable to hear from those on the ground with direct and practical experience of the areas that may be impacted by the policies or legislation under consideration.

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.

⁵ See 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.

⁶ Paragraph 55 of the UK Government’s Command Paper, [The Windsor Framework: A new way forward](#) references the ‘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’.

To fully 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 contained within all three strands of the Belfast/Good Friday Agreement.

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