THE TUV SUBMISSION TO

THE MURPHY REVIEW

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The Introduction

This submission begins with an introduction which is divided into three parts:

The first sets out the structure of the document on the basis of the legal requirements for the review.

The second reflects on the terms of reference in light of the legal requirements for the review.

The third makes comments about the general approach of the review.

We then move to the main body of the submission in accordance with the structure below.

1) The Structure of this Submission

This submission is structured around the legal requirements for the review which are:

Part 6 (2) of Schedule 6A of the Northern Ireland Act 1998 states:

'Within one month of receiving the notification, the] Secretary of State must commission an independent review into the functioning of the Protocol in accordance with paragraphs 7 to 9 of the unilateral Declaration.'[1]

The paragraphs of the said declaration state:

'Independent review

7. In the event that any vote 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 in line with paragraph 3b 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.

8. 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.

9. 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 referred to in paragraph 7 above.'[2] *(Emphasis added)*

Mindful of the above the submission is structured into Parts 1 and 2 pertain to para 7.

Part 1: the functioning of the Northern Ireland Protocol and

Part 2: the implications of any decision to continue or terminate alignment on social, economic and political life in Northern Ireland.

[1] https://www.legislation.gov.uk/ukpga/1998/47/schedule/6A
[2] 1600 17.10 UDec with date [pdf] (1).pdf

In considering the functioning of the Windsor Framework under Part 1, this submission divides this into two using the categories employed by the additional terms of reference.

3.2.1. The constitutional status of Northern Ireland, and;

3.2.2. The operation of the single market in goods and services between Northern Ireland and the rest of the United Kingdom. [3]

The requirement for recommendations set out in para 8 will be met principally through Part 2.

2) Reflections on the Legal Requirements of the Review and Terms of Reference

First, the Review was conceived as a procedure to be deployed in the event that an Article 18 vote passed without cross community consent. The 10 December vote to which this Review is a response, completely lacked cross community consent and was in fact imposed in the context of 100% of unionist MLAs voting against, which would in any previous less controversial vote, have resulted in its not passing. In this context it would obviously add grave insult to injury if now, in addition to designing the most controversial, and far-reaching vote ever taken in the history of Stormont on a majoritarian basis to silence unionists, there was now an attempt to narrow the focus of the review. The legal parameters regarding the review contained two clear provisions that together gave it some credibility. First, the legal requirement in para 7 to assess the implications of both remaining aligned to the Windsor Framework *and rejecting it* and, second, the requirement to make recommendations that must only include, and thus need not be limited to, those enjoying cross community support. In this the superimposition of terms of reference that seek to nullify this is deeply concerning. In the first instance 3.4 of the terms of reference states. 'Recommendations should reflect the context that the Windsor Framework is an international commitment to which the Government has committed to implement in good faith.' Not only does this restriction not appear in the legal requirements with which the terms of reference must comply, much more importantly, it is also contrary to those requirements. While para 7 requires consideration be given to continuing with the Windsor Framework, in compliance with our current international legal obligations, it also requires that consideration be given to departing from it, 3.4 of the terms of reference would seem to prohibit the latter. In the second instance, the terms of reference make it sound like the legal requirements defining the review, only permit recommendations that secure cross community consent, when para 8 says no such thing. The Review must make use of those aspects of what the law requires and permits which enable the unionist voice to be heard, rather than further silenced.

Second, while no reference was made to it in the unilateral declaration, which sets the legal parameters of the review courtesy of Schedule 6A, or at any point until February 2024, the publication of the Safeguarding the Union, Windsor Framework (Constitutional Status of Northern Ireland) Regulations 2024 in February 2024, broadened the remit of the review to '*include the consideration of any effect of the Windsor Framework in the Withdrawal Agreement on: …The operation of the single market in goods and services between Northern Ireland and the rest of the United Kingdom.'* This is an odd innovation that moves us beyond paras 7 to 9 of the unilateral declaration which was concerned with the impact of the Protocol/Windsor Framework, something which pertains to goods, not services. Obviously, the change in the law means that the report will now need to mention services, but this should only be to make the point that the Windsor Framework does not relate to services. The credibility of the review would be jeopardised if the inclusion of services was used to try to generate the impression that the Windsor Framework is not so bad because, while it is having a negative effect on the free movement of goods, it is not having a negative impact on services and so, to that extent,

[3] Independent Review: Terms of Reference.docx

it must be celebrated as a success. Any attempt to try to minimise the presenting difficulty through the creative deployment of something to which the Windsor Framework does not pertain would constitute sophistry of the most blatant kind and must be rejected absolutely.

3) The General Approach of the Review

In approaching the Review process, it is possible to say that the difficulties surrounding the Windsor Framework would not exist if it had not been for Brexit and for this to be deployed as an excuse for: i) living with the Windsor Framework, ii) suggesting that people should be grateful for any small improvements that might be made round the edges as a result of the Review given that a more far reaching change would move away from Brexit, because the Irish Sea border *is Brexit*. However, this simply demonstrates a failure to come to terms with the presenting difficulty. While it is correct to say that the problems around the Windsor Framework/sea border would not exist had it not been for Brexit – in that in the absence of Brexit no one would have ever raised the sea border - its effect was to territorially limit Brexit rather than deliver it. While the Irish Sea Border is a response to the Brexit vote, it is one that seeks to frustrate rather than honour it, just as it has frustrated and undermined the Belfast Agreement for reasons that will be set out by this submission.

Having made these introductory comments, we now proceed to Part 1.

Part 1. The Functioning of the Northern Ireland Protocol/Windsor Framework

In considering the comments on the functioning of the Windsor Framework in Part 1, it is important to be mindful of how they feed into Part 2 and the question about the implications arising from either continuing with the current arrangements or changing them, demonstrating the imperative for the latter. Comments regarding the functioning of the NIP/WF, will be divided into Section 1 (the constitution) and Section 2 (the economy):

Section 1] The impact of the Windsor Framework on the Constitutional Status of Northern Ireland:

Section 1 will comprise of 3 Sub-Sections. Sub-Section 1 will unpack the impact of the Windsor Framework on the constitutional status of NI in general terms. Sub-Section 2 will then do so in more detail, narrowly in terms of democracy; before Sub-Section 3 does so in relation to the Belfast Agreement.

Sub-Section 1: The Impact of the Windsor Framework on the Constitutional Status of Northern Ireland in General Terms

The effect of the Windsor Framework on the constitutional status of Northern Ireland has been to give the European Union the right, first, to make Northern Ireland's laws in 300 areas and second, to divide Northern Ireland from the rest of the UK by means of the imposition of an international SPS and customs border which it governs. Given that this change has been affected in the context of the UK leaving the EU, it results in several changes to the constitutional status of Northern Ireland:

i) From A Full to Partial Democracy

In the first instance, before the application of the Protocol/Windsor Framework, the people of Northern Ireland, like the people of the rest of the UK, and also the Republic, enjoyed the right to stand for election to make *all* the laws to which they were subject. From the application of the Protocol/Windsor Framework, while the people of England, Wales, Scotland and the Republic of Ireland have continued to enjoy this right, the people of Northern Ireland are now only deemed worthy of the right to stand for election to make *some* of the laws to which they are subject. Northern Ireland's constitutional status has thus changed from that of a full democracy to a partial democracy.

It is one thing to be a partial democracy if you have never been a full democracy, but quite another if, having enjoyed the benefits of living in a full democracy for some 100 years, this is then suddenly taken from you.

ii) Effective Colonial Status

In the second instance, the change in the constitutional status of Northern Ireland is something more than being shifted from a full to a partial democracy, for rather than giving the right to make laws in the 300 areas to a particular Northern Ireland elite, excluding most ordinary Northern Ireland voters, the Windsor Framework involves giving this law-making right to foreign countries. The change in constitutional status arising from the impact of the Protocol/Windsor Framework, does not therefore just constitute a denial of democracy to some classes of people in NI but to everyone in NI and to that extent it constitutes a loss of self-government, as Northern Ireland effectively becomes a colony.

Some might respond by arguing that Northern Ireland is not a colony because it remains self-governing for many purposes. There are two difficulties with this argument. First, even if the fact that Northern Ireland is partly self-governing meant that Northern Ireland did not meet the definition of a colony, it would not alter the fact that the arrangement would still result in a change of constitutional status from a full, to a partial democracy, from being wholly to partly self-governing. Second, today all remaining peopled colonies of any size have their own parliaments and are largely self-governing so, being partly self-governing is not contrary to being a colony. The fact is that Northern Ireland is not only deprived full self-government; it is deprived self-government to a significant extent - in 300 areas of law. This means that while it has not been designated as a Non-Self-Governing Territory by the UN General Assembly, it meets the definition of what is a colony.

iii) Acts of Union Partially Suspended

In the third instance, the above changes are implicated in changing the constitutional foundation of the United Kingdom, the Act of Union 1800, by means of partly suspending a critical part of it, Article 6, such that Northern Ireland has effectively been removed for some critical purposes, from the old UK single market for goods. Indeed, to the extent that membership of a single market is based on the freedom to move goods in any direction without encountering an international SPS border or a customs border, the removal of this freedom entirely in one direction makes it difficult to meaningfully invoke a UK single market for goods, but rather a GB single market for goods. To the extent that the provision of a single market co-extensive with the modern nation-state, was critical to the development of the modern state, bound up in its 'territorial integrity' with all that this meant for international relations, there is a real sense in which the suspension of Article 6 has involved the partial suspension of the UK.

iv) Territorial and Market Integrity Suspended

In the fourth instance, given the above, it is hard to overstate the importance of the change in constitutional status resulting from: i] the destructive constitutional consequence of the Irish Sea Border on the UK single market for goods and ii] the constructive constitutional consequences of the Irish Sea Border on the extension of the Republic of Ireland single market for goods to encompass NI. In this one must understand the true constitutional significance of the doctrine of territorial integrity as it relates to the formation, definition and upholding of the market, providing as it does the constitutive foundation for any modern polity, the contradiction of which cannot come without far-reaching constitutional implication. In what follows, we will first consider the legal imperative for not disturbing this unity before looking at exactly how 27 states have sought to disturb it in relation to the United Kingdom.

a) The Imperative for Not Disturbing the Unity

The most basic act of international relations is that of 'recognition', whereby sovereign state A recognises the right of sovereign state B to exist and then make the laws pertaining to the governance of state B across its full territorial integrity. In doing so, state A necessarily renounces any right it might have previously entertained in relation to making the laws of state B. State B then reciprocates. In going through this process both states recognise the sovereignty and territorial integrity of the other and thereby recognise that they have international personality and legal standing in the international society of sovereign states. The exclusive right to make law within their territory has consequences on a whole series of levels, including market integrity, which is constructed by the said law.

The overall importance of territorial integrity gains particularly clear expression in international law, including the UN Declaration on Principles of International Law, Friendly Relations and Co-operation among states in accordance with the Charter of the United Nations which states: *'Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.'*

It also states: *'Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour. Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.'*

Lest anyone should be in any doubt about the importance of these principles, the Declaration also affirms:

'The principles of the Charter which are embodied in this Declaration constitute basic principles of international law, and consequently appeals to all States to be guided by these principles in their international conduct and to develop their mutual relations on the basis of the strict observance of these principles.'

And

'Where obligations arising under international agreements are in conflict with the obligations of Members of the United Nations under the Charter of the United Nations, the obligations under the Charter shall prevail."[4]

b) Disturbing the Unity

The operation of the Windsor Framework violates these principles of international law and involves the Windsor Framework violating both itself and its stated commitment to respecting the territorial integrity of the UK in Article 1 (2) on two bases:

First, it involves 27 states working together through the EU to reject the territorial integrity of the UK by means of claiming the right to make the laws for part of the UK, NI, in 300 different areas.

[4] https://digitallibrary.un.org/record/202170?ln=en&v=pdf

Second, it involves the 27 states then working to further disturb the unity of the UK by means of imposing both an international SPS border and a customs border, dividing the UK into two parts and claiming the right to govern that border.

In order to understand how the territorial integrity of the UK is disturbed it is important to first consider how the border is imposed and then the peculiarly divisive nature of the border.

i. Imposing the Border

The means of imposing the border and the role of 27 other states in its imposition is demonstrated very clearly, for example by EU Regulation 1231.

Regulation (EU) 2023/1231 of the European Parliament and of the Council of 14 June 2023 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 (Text with EEA relevance).[5]

This is not a case of a piece of EU wide legislation that applies to part of the UK as well as the EU. It is a piece of legislation made by the 27 EU member states more than two years after the UK left the EU, which pertains only to the UK, and which regulates the movement of goods from one part of the UK to another, by means of dividing the country into two through an international SPS border.

Its effect is to offer an alternative international border experience, but the EU remains firmly in the driving seat in the sense that it can withdraw this if it wishes under Article 14 of the Regulation, defaulting back to a place where the only available border experience is the standard international border experience.

ii. A Peculiarly Divisive Border

If we are to really understand the threat to the territorial integrity of the UK in terms of the market, though, especially in the context of the international legal obligation (See i. above) placed on states not to disturb or undermine the territorial integrity of other states, it is imperative to appreciate the peculiarly divisive nature of the Irish Sea Border.

There is an assumption in many quarters that the problem with the Irish Sea border is that, for some important purposes, it submits the United Kingdom to the constitutional indignity of being divided by an international trade border, separating off part of itself, Northern Ireland, and treating it as a foreign country for some purposes. When viewed from this narrowly trading perspective, some might take the view that while this may not be particularly fair on Northern Ireland, it is not the end of the world in the sense that Northern Ireland can continue to trade goods with Great Britain in the same way that foreign countries can.

If the above appraisal constituted an accurate assessment of the problem, then it would be constitutionally outrageous, condemning Northern Ireland to being partly disinherited of its home. The truth, however, is even more troubling. In order to appreciate why, we must understand the difference between international trade and domestic trade and the different consequences of imposing an international border on one compared to the other.

Lorries engaged in international trade typically carry one or two products in bulk. In order to take these across an international border they have to meet the expense; in time and money, of generating

[5] Regulation - 2023/1231 - EN - EUR-Lex

one or two export declarations and depending on the cargo, potentially one or two SPS declarations. While the task of having to generate these is an expense, the cost, expressed as a percentage of the value of the cargo, is small. It constitutes an obstacle that can easily be negotiated.

When lorries engaged in international trade enter their destination economy, they travel to distribution centres where they are unloaded and their goods are then loaded, with the goods of many other lorries, onto different lorries engaged in domestic trade. The contents of these lorries are completely different from the contents of lorries engaged in international trade. Rather than carrying one or two products, they can carry up to 300, as they take goods from Exeter to Edinburgh or Cardiff to Carlisle or (pre 2021) from Birmingham to Belfast etc.

However, if one was to place a customs border arbitrarily across the middle of an economy, for our purposes, the UK economy, from, say, Chester to Great Grimsby, these lorries would be stopped and required not to produce one or two customs declarations but 300 and potentially another 300 SPS declarations. The cost of having to generate all this paperwork in time and money expressed as a percentage of the value of the cargo, (which is not the cost of checks) would be huge and constitute for some purposes, an absolute barrier, making trade on this basis either uneconomic or not worth the inconvenience.

The application of a customs border in this domestic context, for which it was not designed, would therefore be much more divisive than the application of a customs border along the international boundary between two separate economies, for which it was designed. It would require the UK to suffer the indignity of inserting an alienation within itself, the practical consequences of which are far more divisive than those flowing from the application of a customs border between different countries. Far from resulting in the mere inconvenience of an additional hurdle, as in international trade, as if it is a foreign country, the application of a customs border across an integrated economy would effectively constitute, for some purposes, a solid barrier, the consequences of which would be devastating and necessarily create trade diversion. Regardless of which side of the border one was located, people would be denied access to the full benefits of citizenship, which in the modern nation state means direct access to the whole of their national single market, with all the attendant economic benefits and opportunities.

In turning to apply these realities to the place within the United Kingdom where such a border has been imposed, between GB and NI, it is important to understand two further points:

In the first instance, in looking at Northern Ireland it can be tempting for the eye to be led by geography and to conclude that even if the people of Northern Ireland suffer as a result of having access to goods from GB restricted, they will at least benefit from having access to the Republic of Ireland, which must count for something very significant as the two jurisdictions have a land rather than a sea border. In this regard, however, we must be led by economic reality rather than geography.[6]

The truth is that, for all the reasons set out very eloquently by Dr Graham Gudgin of Cambridge University in his Policy Exchange publication, *The Island of Ireland*, the economy of Northern Ireland is fully integrated with Great Britain, creating the United Kingdom economy, but it is not integrated with the Republic of Ireland economy. As Gudgin explains, while there are, of course, some economic links between North and South, these are (in 2021) surprisingly limited, especially when one has

[6] Geoff Sloan, 'Down to Earth: Geopolitical Realities,' *The Idea of the Union*, Ed Wilson Foster and Beattie Smith 2021.

regard for the fact that we had been in the same single market for thirty years. In this context while there are, of course, some businesses that look to the South, the majority look within NI and to GB.

'There are two quite distinct economies on the island with a surprisingly low level of trade between them. The strong integration for Northern Ireland is with the rest of the UK. A much larger volume of trade occurs with GB than with the Republic of Ireland. Currency, laws, taxation and public administration including social security systems are those of the UK. Road signage is British, the health service is the NHS and the national broadcaster is the BBC.'[7]

In the second instance, the Chester-Great Grimsby customs border fails to adequately explain the difficulty arising from the Northern Ireland Protocol which can only be fully appreciated when one remembers that if you cut off a small part of the UK economy, like Northern Ireland, from the wider UK economy, you create difficulties for it that far outweigh the difficulties that would arise for those effected if you simply cut the economy in half. While this would cause massive disruption, people living North of a Chester-Great Grimsby customs border would still have access to a lot of suppliers as would those South of the border. Northern Ireland, however, finds itself in a much more challenging situation.

v) Loss of Essential State Functions

In the fifth instance the impact of the Windsor Framework on the constitutional status of Northern Ireland is also violating Article 1 (2) of the Windsor Framework and its commitment that the Framework 'respects the essential state functions of the UK'.

In responding to a debate on the Official Controls Amendment Regulations 2024, and how those regulations governing GB relate to the Windsor Framework governing NI, the UK Government has effectively conceded that the biosecurity of Northern Ireland is now ultimately the responsibility of the EU. This is a huge development because the provision of security to one's citizens is not only an essential function it is arguably the most foundational essential function, and biosecurity constitutes a key element of it. Notwithstanding the fact that Article 1 (2) of the Windsor Framework states that it 'respects the essential state functions of the UK', it is now clear that its operation is not having this effect. For biosecurity purposes Northern Ireland is now effectively on a par with the rest of the world.

In response to this some might try to argue that there is nothing new here. They will point out that the whole island of Ireland has long been treated as a single epidemiological unit. That, however, is a different point and doesn't change the fact that, prior to 2021, the biosecurity of Northern Ireland was just as much the responsibility of the UK Government as the biosecurity of Great Britain. Notwithstanding Northern Ireland being joined to the Republic, and the island of Ireland being treated as a single epidemiological unit, Northern Ireland was ultimately part of the UK security identity because it was fully part of the United Kingdom. The effect of the operation of the Windsor Framework has been to change this.

When challenged on the fact that the UK Government has abdicated an essential biosecurity on 29 January, the Government did not deny it. The Minister said: *'Northern Ireland continues to be protected under the biosecurity regime of the EU, in line with the Windsor Framework. Under this regime, Northern Ireland implements official controls and additional protections in response to risks, such as measures related to pest-free areas, traceability and additional notification requirements for the highest-risk goods to maintain the biosecurity of the island of Ireland.'*[8]

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[7] Graham Gudgin, *The Island of Ireland: Two Distinct Economies*, Policy Exchange, 2022, p. 75.

[8] Official Controls (Amendment) Regulations 2024 - Hansard - UK Parliament

And when challenged specifically about this in relation to the biosecurity of Northern Ireland with respect to the recent Foot and Mouth outbreak in Germany the minister said: *'I want to stress that the EU takes its biosecurity responsibilities for something like foot and mouth extremely seriously. There had not been a foot and mouth outbreak in Germany since 1988, so this is very significant for them'*[9]

Sub-Section 2: Disenfranchisement in more Detail

Having introduced the impact of the Windsor Framework on the constitutional status of Northern Ireland in general terms, we now turn to look at the disenfranchising implication of the Framework in more detail, first, by means of understanding how the level of disenfranchisement increases over time, second, by means of looking at the impact of the Stormont Brake and Applicability Motion mechanisms on our disenfranchisement and, finally, by means of considering the impact of the disenfranchisement on young people.

i. Cumulative Disenfranchisement

In the first instance, it is important to understand the sense in which the problem of disenfranchisement becomes worse and worse over time. In addition to considering disenfranchisement from the perspective of the number of areas of law affected, there is also, critically, the number of laws. On 22 March 2023, the chair of the European Scrutiny Committee, Sir Bill Cash, told Parliament that Northern Ireland had already had 640 new EU laws imposed since 1 January 2021. That figure will now be much larger and over time will just get larger and larger, making our disenfranchisement progressively more and more difficult both socially and politically. In this every new EU law testifies to the sense in which we become more and more hemmed in over time by our disenfranchisement. Moreover, and notwithstanding the introduction of the Applicability Motion, see below, we are also seeing an increase in the number of areas of law in relation to which our disenfranchisement is growing.

ii. The Stormont Brake and Applicability Motions

In the second instance, we must turn to consider the impact of the two mechanisms that the then Prime Minister, Rishi Sunak introduced in 2023 to eliminate the democratic deficit: the Brake and Applicability Motion.[10] To the extent that they were designed to address a democratic deficit problem, they were always doomed because any attempt to classify the democratic problems associated with the Windsor Framework as the democratic deficit, completely miscategorises the presenting injustice.

The term the 'democratic deficit' has a clear and established meaning, especially in the context of discussions about the EU. It refers to the problem of a democratic shortfall that existed when we were part of the EU. The deficit arose when, notwithstanding having a seat in the Council of Ministers and seats in the European Parliament, the UK could be overruled by qualified majority in the Council of Ministers, and by majority voting in the European Parliament, and by decisions of the European Court of Justice. It was a deficit, a shortfall, because it existed against the backdrop of our being represented within the EU institutions, in the context of the absence of a felt European demos which would have (had it existed), transformed the experience of being overruled by what is not a part of our demos, and thus lacking consent, into the experience of being overruled by something that is part of our demos and which consequently constitutes part of consent.

[9] Ibid.

[10] Commons Chamber - Hansard - UK Parliament

The experience of Northern Ireland, by contrast, is quite different. In the 300 areas of law in relation to which we have effectively lost our citizenship for at least the next four years, we are not looking at a shortfall but a complete negation of democracy because the laws are made for us by the bicameral legislature of the EU, the Council of Ministers (the Upper House) and the European Parliament (the Lower House) in which Northern Ireland has no representation whatsoever. Moreover, because the laws are made by a foreign parliament rather than a domestic elite, this negation of democracy is also implicated in the construction of what is effectively a neo-colonial relationship.

In a context where we are not clear and transparent about the nature of the presenting injustices - as was the case when the Windsor Framework was announced - it is no surprise that the 'solutions' devised to address them should completely miss their target, as was the case with the Stormont Brake and Applicability Motion.

What About the Brake and Applicability Motion?

The truth is that neither the Stormont Brake, nor the Applicability Motion mechanism address the removal of our citizenship in relation to the 300 areas of law.

The first difficulty is that the Brake and Applicability Motions only apply to some imposed law and thus make no attempt to address the presenting difficulty in relation to those aspects of the 300 areas they do not touch.[11]

The second difficulty is that rather than restoring our citizenship, the right to stand for election to make the laws to which we are subject in the 300 areas, where they do apply, the Brake and Applicability Motion only provide a right to stand for election to try to stop laws that have already been made for us by a Parliament in which we are not represented. Furthermore, if one is successful in blocking new laws this brings with it not right to make alternative laws. Both mechanisms, therefore, are discriminatory because they provide us with a second class, negative citizenship, limited to trying to stop laws made by a foreign Parliament rather than make them.

The third difficulty is that, with respect to the Brake, although it was, first, presented in Feb/March 2023 as 'a powerful safeguard', the Secretary of State in announcing his decision not to allow the Brake to be pulled in relation to the Chemicals Regulation, in Jan 2025, explained that is in fact very narrow in scope, and subject to a high threshold, which he did not believe had been met. His point was not that he had been needlessly reluctant to agree that the Brake should be pulled but that the law was so tightly framed that he had no choice but to reject the application that it be pulled in relation to the Chemicals Regulation.[12]

The fourth difficulty is that even had the Secretary of State agreed to the pulling of the Brake, the matter would then have been sent to international arbitration between the EU and UK, which could have sided with the EU. In other words, an international arbitration body has the right to negate even our very truncated expression of citizenship.[13]

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[11] This is made plain in the following para: 'This paragraph covers Union acts referred to in the first indent of heading 1 and headings 7 to 47 of Annex 2 to this Protocol, and the third subparagraph of Article 5(1) thereof.' DECISION No 1/2023 OF THE JOINT COMMITTEE ESTABLISHED BY THE AGREEMENT ON THE WITHDRAWAL OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FROM THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY of 24 March 2023 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22023D0819

[12] https://www.bbc.co.uk/news/articles/c1m553xv7lyo ; https://www.gov.uk/government/publications/letter-from-the-secretary-of-state-for-northern-ireland-regarding-stormont-brake-decision

[13] See: 'In case the arbitration panel has ruled, in accordance with Article 175 of the Withdrawal Agreement, that the United Kingdom has failed to comply with Article 5 of the Withdrawal Agreement in relation to a notification under Article

The fifth difficulty is that, with respect to the Applicability Motion, unlike the Brake which requires a decision within two months, there is no time frame on the response of the Secretary of State to the Applicability Motion. Thus, notwithstanding the fact that Stormont refused to pass an Applicability Motion with respect the EU Regulation 2023/241 on 19 March 2024, no announcement was made until 24 April 2025. When the Government finally responded, they overruled the Assembly applicability vote because they argued it did not form a regulatory border.[14]

The sixth difficulty is that not only has the Government responded to the first attempt to manifest the democratic safeguard, the Stormont Brake, by overruling it, and the first attempt to use the applicability motion in the same way, but they have actually gone further breaking new constitutional ground in demonstrating the impotence of the 'powerful democratic safeguards' we had been promised. On the same day that the Government announced its decision to overrule the Assembly's decision to deny an applicability motion, it also prevented any such attempt on the part of the Assembly in relation to another new regulation, the Critical Raw Materials Regulation. The Secretary of State ruled, before the Assembly had had the opportunity to consider the said regulations, that they did not create a new regulatory border and added them to the Windsor Framework.[15]

Finally, the failure of these mechanisms to deliver democracy is underlined by the fact that in the space of over a year there were only two attempts to assert Northern Ireland's negative citizenship. Quite apart from the fact that these attempts were overruled by the government, and that they only would have amounted to a negative rather than positive citizenship in any event, the very limited extent of these assertions – just 2 – further underlines the presenting difficulty.

iii. Disenfranchisement and Young People

The enormity of the problem arising from the degradation of democracy imposed on Northern Ireland, was recently underlined by an intervention by a group of young people. The full extent of the assault on democracy arising from the Irish Sea Border, and the toxic nature of the controversy to which it has given rise, found expression in a letter to *The Daily Telegraph* from a group of young people in Northern Ireland

'SIR – On the day the Hereditary Peers Bill was introduced to Parliament last year, Nick Thomas-Symonds, the Minister for the Constitution, said: "I want young people growing up... in my constituency, and indeed in every part of the country, to feel that they have the same chance as anyone else to play a part in making the laws of the land." To us – all residents of Northern Ireland in our 20s and 30s – it is quite extraordinary that the minister should have uttered these words, when at the same time the Irish Sea Border was affecting the most dramatic reversal of UK citizenship in our history, removing from us all means of making the laws to which we are subject, not just in relation to one law or 300, but 300 areas of law. The presence of 92 hereditary peers in the House of Lords in no way threatens our right to be considered for life peerages. Similarly, they do not affect our right to stand for election to the House of Commons or Northern Ireland Assembly. The Irish Sea Border, by contrast,

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13(3a) of the Windsor Framework, swift compliance with the ruling of the arbitration panel should be achieved, as set out in Recommendation No 2/20234' Microsoft Word - Joint Declaration by the United Kingdom of Great Britain and Northern Ireland and the European Union in the Withdrawal Agreement Joint Committee on Article 13(3a).docx

[14] https://questions-statements.parliament.uk/written-statements/detail/2025-04-24/HCWS601 This is problematic because the Secretary of State only has powers to overrule if legislation would not create a regulatory border and yet the justification provided effectively assumes this power to the different threshold, namely that the legislation is unlikely to give rise to a border. This is underlined by the fact that the Government effectively promises that if the regulation creates a border, they will change GB legislation bring it into line with NI. 24.04.2024 - SoSNI to Assembly Speaker.docx

[15] Ibid.

denies us rights enjoyed by our peers everywhere else in the country. The Government should not lecture young people about the importance of active citizenship, only to argue that those in one part of the UK should be happy to lose it in relation to 300 areas of law. There may be some in Government who don't think Northern Ireland matters, but they should consider the wider messaging implications of their actions for young voters. How can something that is vital in one part of the country be dispensed with in another? Consistency is important. We are grateful to Baroness Hoey and other peers for responding to our concerns, and their commitment to raise them during the committee stage of the Hereditary Peers Bill this week.

Cllr Anna Henry, Cllr Christopher Jamieson, Cllr David Clarke, Jack Steel, Jay Basra, Harry Nicholl, Matthew Shanks, Grant Warren, Graeme Armour'[16]

This coincided with a social media video which having replayed the relevant part of the Minister for the Constitution's statement, was then followed by a video from 23 year old Cllr Anna Henry:

'The government says it wants to give young people across the UK the same chance as anyone else to make the laws to which they are subject and that they are rising to this challenge by taking a bill through Parliament to remove hereditary peers from the House of Lords. But this is a nonsense that needs calling out. The truth is that the presence of 92 hereditary peers in the House of Lords in no way threatens my right to make the laws to which I am subject either by being made a life peer, an MP or an MLA. What does threaten my right to make the laws to which I am subject, though is this Government. Through their Windsor Framework they deny me, unlike the people of England, Wales and Scotland, the right to make the laws to which I am subject in 300 areas. Even if I was an MP, a Peer and an MLA all rolled into one, I still would not be able to make these laws. To fundamentally undermine my citizenship in this way, and that of all the people of Northern Ireland, while pretending to be moving forward is deeply disingenuous and a very serious breach of trust. When challenged the only justification they can come up with is that they are required to disenfranchise me by international law. This doesn't help them at all. It makes them complicit in effectively sabotaging international law, making is an unenlightened tool to justify reactionary causes for which it was never designed. We support Baroness Hoey's amendment 90 F, which calls this out. Please do the same.'[17]

The young people put their finger on a key issue. Seeking to, on the one hand, tell young people in Great Britain that their citizenship is really important, while at the same time as telling young people in Northern Ireland that theirs is so inconsequential that they should think nothing of losing the right to stand for election to make the laws to which they are subject in 300 areas of law, is an impossible circle to square.

This was picked up by young people in Great Britain:

Jacob Watts, 19, a student at Cambridge University from the North of England said:

"I stand in complete support of our peers in Northern Ireland. Voting and citizenship are essential features of any country that calls itself a democracy. Disenfranchising young people in this way goes completely against that. The Government is blatantly treating Northern Ireland as a second-class part of the United Kingdom."

Tom Gartside, 22, a Newcastle University student and former head of a professional sports consultancy, didn't hold back:

[16] https://www.telegraph.co.uk/opinion/2025/03/31/letters-time-to-drop-illusions-about-special-relationship/
[17] https://x.com/CatharineHoey/status/1906825882162917598

“Sir Keir Starmer once said that rights are only fair if they are universal. Isn’t telling one part of the country that citizenship and voting is vital, while simultaneously disenfranchising young people in another part of the country an example of Two-Tier Keir?”

Kane Blackwell, 25, the Conservative Parliamentary Candidate for Stratford and Bow in the 2024 General Election, said:

“The Government must think young people are exceptionally stupid if they can get away with telling young people in Stratford, Sittingbourne, Swansea or Strathclyde that citizenship and voting is vital while at the same time disenfranchising young people in Northern Ireland who are having laws thrust upon them from a foreign power without the ability to change that legislation. It is dividing our United Kingdom.”

“It is dividing our United Kingdom.”

32-year-old Scott Lewis from Cardiff said:

“What’s happening to our peers in Northern Ireland is a disgrace: stripped of rights, silenced by a state that dares to preach citizenship while practising discrimination.

“You don’t get to bang the drum for voting and civic duty in England, Wales and Scotland while turning Northern Ireland into a democratic wasteland.”[18]

The efforts of the young people from Northern Ireland resulted in a debate on amendment 90 F to the Hereditary Peers Bill.

Sub-Section 3: The Impact of the Windsor Framework on the Belfast Agreement

In order to provide a full assessment of the constitutional implications of the Windsor Framework, it is important to understand its impact on the Belfast Agreement, both because the Agreement has come to define key aspects of the constitutional architecture of Northern Ireland, and because protecting the Belfast Agreement was the given justification for the Windsor Framework.

Background

The creation of the Northern Ireland Assembly in 1998 was based on the consent of the largest unionist party at the time, the UUP and its constituency. The DUP subsequently brought into this framework after alleged changes made by the St Andrews Agreement in 2006.

The sticking point for unionists who could not go along with this and separated from the DUP to create the TUV was our unwillingness - like Fine Gale and Fine Fail - to enter into government with Sinn Fein which continues to hold onto its ill-gotten gains, to glorify the terrorism of the IRA and remains overseen by the IRA Army Council.

Additionally, the TUV rejected - and continues to reject - a system which denies two fundamentals of democracy, the right to vote a party out of government and the right to have an opposition to hold the government to account and provide the electorate with the option of an alternative government. In light of the repeated failure of devolution in Northern Ireland over the last 25 years, we regard our position as being vindicated.

[18] https://conservativepost.co.uk/if-they-can-do-it-to-them-theyll-do-it-to-us-youth-revolt-over-northern-ireland-disenfranchisement/

Other unionists claimed engagement with devolution post 1998 was only possible - and clearly without unionist engagement in devolution the entire 1998 framework of government would have never got off the ground - because of four key provisions: recognition of the land border, the consent protection, the cross-community consent protection and the democracy protection.

Recognising the Land Border

The nature of any agreement is that it contains something for both parties. The benefits for nationalists were very significant. In addition to making provision for early prisoner release (which most unionists opposed) the agreement provided a mechanism for Northern Ireland to be taken out of the UK and into the Republic of Ireland by means of a referendum, called by the Secretary of State subject to Schedule 1 (2) NIA 1998, which in the event of a no vote could happen thereafter at 7 year intervals until achieving a yes vote. The more modest benefit for unionists was that, unless and until that point, the Republic should afford the UK the basic dignity that any sovereign state in the world should afford any other sovereign state, 'recognition.'

The history of the relationship between the UK and first the Irish Free State and then the Republic of Ireland from 1922 until 1998 was very unusual. As demonstrated in Section 1, the first move of international relations is recognition which involves state A recognising the right of state B to exist and to make the laws of state B across the full extent of its territory, renouncing any right it might have previously entertained in this regard, after which state B returns the favour. If two states can afford each other this dignity, then ambassadors can be exchanged, and formal diplomatic relations established.[19] From 1922 until 1998, while the UK recognised the Free State/Republic, the Free State/Republic would not recognise the United Kingdom of Great Britain and Northern Ireland and indeed used the most basic expression of itself to repudiate the UK, devoting the first two clauses of its constitution to claiming Northern Ireland as part of the Free State/Republic. This would normally make diplomatic relations between two states impossible, but the UK Government decided to overlook the difficulty and had normal diplomatic relations with the Free State/Republic, notwithstanding the fact that it refused to recognise the territorial integrity of the UK and even its name.

Thus, while unionists had to give up things that constituted significant concessions in that they were highly unusual - the release of terrorists and the provision of a mechanism to allow for Northern Ireland to be put in another country - the only substantive thing they got in return was what they should have got all along, recognition (unless and until a border poll) of the border that recognises that Northern Ireland is in the UK. The Belfast Agreement thus created a situation in which the border between Northern Ireland the Republic of Ireland became more real than at any time since the Free State broke away.

It was only once the border had been recognised that it was then possible to look at how the relationship between the UK and the Republic over the newly recognised land border could be addressed. Given the determination of both the UK and ROI that relations between the two countries should be close, there was then an interest in developing cross border mechanisms to manage the relationship across the newly recognised border. While these arrangements gave each government the opportunity to express views about what happened the other side of the border hey did not move away from the standard form of international relationship in that they gave neither state the sovereign right to make laws for the other. Ultimately the Republic was free to make its laws, and the UK was

[19] H Lauterpacht *Recognition in International Law* (CUP Cambridge 1948).

free to make its laws. From 1998/9 the border was recognised more than at any time since 1922, all but five years of which had seen the UK and the Republic operate separate single markets.

The Impact of the Windsor Framework on the Belfast Agreement

In this context, mindful of its para 7 to 9 obligations in the unilateral declaration effected through Schedule 6A of the Northern Ireland Act 1998, the review must engage with the impact of the Windsor Framework on the Belfast Agreement, both the destruction of the substantive side of the agreement for unionists (I]) and the violation of the protections upon which unionist support depended (II]).

I] Rejecting the Land Border without a Referendum

The problem with the Windsor Framework is that, rather that protecting the Belfast Agreement as an agreement whose credibility depends on offering something to both unionists and nationalists, it destroys the agreement by completely nullifying its substantive provision to unionists. Indeed, the Windsor Framework actually creates a greater injustice than that which obtained from 1922 till 1998 for unionists and which the Belfast Agreement was supposed to remove. Rather than saving the Belfast Agreement which involved the Republic ceasing to claim the right to make Northern Ireland's laws, in return for a border poll, the Windsor Framework actually involved 26 states joining with the Republic in its efforts to not simply claim the right to make its laws, but to actually make its laws and to such a degree that the effect is the creation of an all-island single market for goods, the essential pre-requisite of a modern nation state. If rather than recognising the border, the significance of the Belfast Agreement was its negation, there would have been no deal because it would have been all one way. It would mean that unionists agreed to removing the border and the release of prisoners in return for a border poll. There is no balance here, just a series of concessions to nationalists, in which context there would have been no deal.

II] Rejecting the Protections

In addition to the 'substantive provision for unionists', the Belfast Agreement also came with a series of protections to the benefit of both communities, without which unionist (and no doubt nationalist) support would have not been forthcoming.

a. Consent Protection

The first protection was acknowledgement that, in the words of the treaty, '*it would be wrong to make any change in the status of Northern Ireland save with the consent of a majority of its people.'*[20] The imposition of the Irish Sea Border involved the disenfranchisement of Northern Ireland in 300 areas of law. While it did not matter where you lived in the UK before 1 January 2021, everyone could stand for election to make all the laws to which they were subject, that non-discriminatory settlement was terminated from that date. From that point onwards the operation of the Protocol and then, after its amendment, the Windsor Framework, has created a new arrangement which declares that while the people of England, Wales and Scotland are worthy of the right to stand for election to the legislatures making all the laws to which they are subject, the people of Northern Ireland are only worthy of the right to make some of the laws to which they are subject.

As noted in Section 1, this creates a clear change in the constitutional status of Northern Ireland, moving us from being a full to a partial democracy, the biggest constitutional change since the creation of Northern Ireland. Moreover, rather than the law-making prerogative being moved from the whole

[20] The Belfast Agreement An Agreement Reached at the Multi-Party Talks on Northern Ireland.pdf

Northen Ireland electorate to a Northern Ireland upper class elite, this legislative function was moved to a foreign government, with the result that we now also meet the definition of colony.

The enormity of the constitutional change has been recognised within the Republic. For example, Stephen Collins, writing in *Ireland's Call* said: *'Instead there was an unprecedented arrangement in the shape of the Northern Ireland Protocol whereby one of the four component parts of the UK remained in the EU economic zone while the other three departed. It represented the most fundamental change in the status of Northern Ireland since the partition of the island by the Government of Ireland Act of 1920.'* [21]

There has been an attempt to argue that the Supreme Court Judgement of February 2023 states that the Northern Ireland Protocol/Windsor Framework does not violate the consent provision of the Belfast Agreement. That, however, is incorrect. The Supreme Court Judgement highlights that in our dualist legal system it was only able to adjudicate on our domestic law. In this context it was compelled to rule on Section 1 of the 1998 Northern Ireland Act rather than on the Belfast Agreement. While Section 1 was certainly an attempt to translate something of the consent principle in international law into domestic law, it plainly falls well short of the protection set out in international law in the Belfast Agreement. In this context, although the Northern Ireland Protocol does not give rise to the one, very specific change in constitutional status addressed by Section 1 of the Northern Ireland Act 1998, namely the complete removal of Northern Ireland from the United Kingdom and into the Republic of Ireland, it does give rise to a change in constitutional status (and a very far-reaching change at that), and so is certainly caught by the consent protection in the Belfast Agreement. Thus, the operation of the Windsor Framework, while consistent with binding domestic law set out in Section 1 of the Northern Ireland Act 1998, is plainly in violation of the critical 'any change' protection in international law, as set out by the Belfast Agreement.

It is possible to respond to this by saying that because the Belfast Agreement is international law, and non-binding, it can be ignored, but there would be a significant political cost in doing so. In the first instance, it does not look good to violate a central provision of international law that it has been said secured peace in Northern Ireland from 1998 until 2020. (To this end we must remember that when politicians from around the world gathered in Belfast in April 2023 they did so for the purpose of marking the 25th anniversary of the Belfast Agreement, not the Northern Act 1998). In the second instance, if this part of international law is ignored, then the long-term basis for unionist engagement with the devolved institutions is removed.

b. The Cross Community Consent Protection

The second protection was based on recognition of the impact of the years 1971/2. In July, and again in October 1971, the nationalist community said it was no longer willing to co-operate with being part of 'the people of Northern Ireland' in the sense that they refused to be part of a common body politic of which the NI legislature at Stormont was the principal organ, such that they were prepared to accept the legitimacy of its votes, including when they were in a minority. Nationalists instead declared that rather than being a minority within a conception of 'the people of Northern Ireland', wherein the majority was unionist, they were instead a people in their own right. They withdrew from Stormont and, in the October, set up a parallel nationalist parliament, representing the nationalist people of Northern Ireland.

[21] Stephen Collins, *Ireland's Call: Negotiating Brexit*, 2022, Dublin, Red Stripe Press, p. 4.

The UK Government intervened the following March to terminate the Parliament of Northern Ireland and from that point onwards controversial decisions regarding the governance of Northern Ireland were never (until last December) made at Stormont on a majoritarian basis. In this context, it was only possible to restore devolved government when a mechanism had been developed to ensure that if either nationalists or unionists felt a proposition constituted an existential threat to their community - which would likely be imposed on the basis of a simple majority vote - they could invoke cross community consent, requiring support for the measure from both communities. This meant that there was consequently never a risk of a controversy being imposed in the pretended name of 'the people', when some within that 'people' were of the view that far from being something that could be upheld in their name, it constituted an existential threat to them. It is only because of this provision that devolution was ever possible between 1998 and 2020.

The operation of the Windsor Framework in this regard has been deeply destructive on two bases:

First, the Belfast Agreement cross community consent provision is required to apply potentially in relation to all Stormont decisions if either community wishes to invoke it. There is absolutely nothing in the text of the Belfast Agreement limiting the application of this protection to certain classes of decision.[22] The Government's stated justification for not having cross community consent was that it is not required by law. As a matter of domestic law, expressed in the Northern Ireland Act 1998, as amended in 2020, that statement is correct. It is, however, incorrect as a matter of international law. The Safeguards Section of Belfast Friday Agreement requires that provision be made for cross community consent in relation to decisions made at Stormont. There is nothing in the text of the agreement limiting the required application of cross community consent to certain categories of decision. Moreover, clearly the Government felt that international law had been faithfully reflected in the language of the 1998 Act, which is why they moved to amend it in 2020 to limit the application of cross community consent to certain classes of decision by means of disapplying it to Stormont votes on the future application of the Protocol. Specifically, in November 2020 they introduced a new Schedule 6A to the Northern Ireland Act 1998, through the Protocol on Ireland/Northern Ireland (Democratic Consent Process) (EU Exit) Regulations 2020, 18 (5) of which disapplied cross community consent to Stormont votes on the application of the Protocol.[23]

Second, in approaching cross community consent in good faith, we have to approach it with common sense, recognising that the motive for cross community consent was to protect the interests of both communities in the context of dealing with perceived existential threats, which are, by definition, more, rather than less likely to arise in the context of controversies pertaining to 'high politics', the domain of international relations, than more mundane questions of 'low politics.' In this context it is obviously contrary to reason and absurd to try to argue that it was only ever intended that cross-community consent should apply to less controversial decisions taken at Stormont, such that if it was

[22] 'Safeguards 5. There will be safeguards to ensure that all sections of the community can participate and work together successfully in the operation of these institutions and that all sections of the community are protected, including… (d) arrangements to ensure key decisions are taken on a cross-community basis; (i) either parallel consent, i.e. a majority of those members present and voting, including a majority of the unionist and nationalist designations present and voting; (ii) or a weighted majority (60%) of members present and voting, including at least 40% of each of the nationalist and unionist designations present and voting. Key decisions requiring cross-community support will be designated in advance, including election of the Chair of the Assembly, the First Minister and Deputy First Minister, standing orders and budget allocations. In other cases such decisions could be triggered by a petition of concern brought by a significant minority of Assembly members (30/108).'

[23]'18 (5) Section 42 does not apply in relation to a motion for a consent resolution.'
The Protocol on Ireland/Northern Ireland (Democratic Consent Process) (EU Exit) Regulations 2020

ever asked to make determinations about ceding powers to the Republic of Ireland, the requirement for cross community consent would fall away.

In responding to the above there may be an attempt to try to defend the arrangement on the basis that we should not get things out of perspective. The Article 18 vote was only one vote. In order to appreciate the problems with any attempt to bat away the above difficulties on that basis, however, three points must be understood.

In the first instance, the Article 18 vote was not only the first majoritarian vote at Stormont in over half a century; it was also a more far-reaching constitutional decision, than any made before in the history of Northern Ireland. MLAs voted to renounce the rights of those residing in Northern Ireland to make their legislation in 300 areas of law in favour of the Republic of Ireland and 26 other states.

In the second instance, although there is a sense in which it was only one vote, it actually spoke of hundreds of votes, handing over decision making in 300 areas of law to the Republic and 26 other states for a four-year period.

In the third instance, it must be understood in its context. From 1972 until 2017 unionists held or would have held (when there was no Assembly) a majority of seats at Stormont. We were told we had to sacrifice the normal benefits of having a majority out of regard for nationalist concerns. That constituted a very significant sacrifice and over the span of more than forty years. Imagine then our shock when, two years after finding ourselves no longer in the majority, majority voting was imposed. This is plainly discriminatory, sending the clear message that while unionist majorities cannot be accepted other majorities are fine. In this context the Article 18 vote has inevitably been seen as a gerrymandered, discriminatory vote to silence the voice of unionists.

The destabilising impact of the imposition of majoritarian voting in relation to the Article 18 vote has been further extended by the Secretary of State's response to the first use of the Stormont Brake and the first rejection of an Applicability Motion. Every single unionist MLA rejected the EU Craft Regulation and the EU Chemicals Regulation and yet they have been imposed and thus, once again, the protection that unionists (and nationalists) enjoyed between 1998 and 2024. This means that in one sense cross community consent has been overruled by the Government not just once but three times since December, although in truth that massively understates the difficulty because in truth the first vote represents the overruling of cross community consent on multiple occasions over the course of four years. This means that every unionist can object, and they can be ignored. This again completely destabilises the Northern Ireland political settlement, sabotaging stability by challenging the foundation for unionist engagement.

c. The Democracy Protection

The third protection that made devolution possible from 1998 until 2024, which has now been removed by the operation of the Windsor Framework, again pertains to an ongoing provision of international law that is currently being violated by domestic law, the requirement of the state parties to uphold the right of the people of Northern Ireland to 'pursue democratically national and political aspirations.'[24] This can only be understood as an obligation to uphold the right in question from the point at which it was bestowed, when the people of Northern Ireland had the right to 'pursue

[24] 'RIGHTS, SAFEGUARDS AND EQUALITY OF OPPORTUNITY Human Rights 1. The parties affirm their commitment to the mutual respect, the civil rights and the religious liberties of everyone in the community. Against the background of the recent history of communal conflict, the parties affirm in particular: … the right to pursue democratically national and political aspirations;' The Good Friday Agreement

democratically national and political aspirations' in relation to all the laws to which they are subject. Rather than being upheld, the operation of the Windsor Framework has resulted in that right being subject to a radical diminution. The people of Northern Ireland now find that we can no longer 'pursue democratically national and political aspirations' in relation to 300 areas of law, with respect to which we could previously 'pursue democratically national and political aspirations', such that our citizenship has been subjected to far reaching truncation.

It is again possible to respond to the violation of the democracy protection (as with the consent protection and the cross-community consent protection) by saying that it relates to international rather than domestic law and so can be ignored. That would, however, once again constitute a politically foolish and very high-risk strategy. In the first instance, it is extremely unwise to make domestic provisions that violate undertakings in international law that have made it possible for Stormont to function as the devolved assembly of a divided society. In the second instance, even if these provisions did not exist in international law and had just been made on the basis of goodwill, to the extent that devolution was only possible with them, their removal would place devolution in jeopardy.

Conclusion: Article 16 Engaged

In conclusion, the constitutional difficulties caused by the Windsor Framework: moving Northern Ireland from a full to a partial democracy, imposing neo-colonialism, suspending a foundational part of the Acts of Union, destroying key aspects of the economic foundation of the UK and relieving the UK of essential state functions are immense. They are not addressed in a credible way by either the Brake or the Applicability motions. Rather than helping to protect and uphold the Belfast Agreement the constitutional effects of the Windsor Framework have effectively suspended it.

The collective effect of these injustices and in particularly the expressly discriminatory practice around cross community consent, to deny majoritarianism to unionists for over 40 years and then deny unionists the same courtesy when they cease to have a majority, are destabilising, especially in the context of alternative means of managing the border (see Part 2) generate an acute sense of injustice that has major implications for Article 16 of the Windsor Framework.

'Article 16 (1)

'Safeguards

1. If the application of this Protocol leads to serious economic, societal or environmental difficulties that are liable to persist, or to diversion of trade, the Union or the United Kingdom may unilaterally take appropriate safeguard measures. Such safeguard measures shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation. Priority shall be given to such measures as will least disturb the functioning of this Protocol.'

In this provision both parties agree that serious economic, societal or environmental difficulties that are liable to persist provide grounds for the derogation mechanism within the treaty to be initiated. Similarly, both parties agree that trade diversion is also a ground for initiating the derogation mechanism.

This means that the Windsor Framework was devised in terms that recognised not that: i) the occurrence of serious economic, societal or environmental difficulties that are likely to persist or ii) trade diversion, were difficulties that must be absorbed within the four corners of the agreement but rather that their occurrence was recognised as being **inconsistent** with the continuance of the agreement, certainly in its current form.

In 2021 there were repeated calls for the triggering of Article 16 of the Northern Ireland Protocol. The only party to have ever triggered Article 16 is the European Union on 29 January 2021, after less than a month of the operation of the Protocol. The EU quickly had second thoughts. The UK has never triggered Article 16.[25]

In July 2021, however, the then Government published its Command Paper, *The Northern Ireland Protocol: the Way Forward* in which they said they believed the Article 16 red lines had been crossed and the UK had the right to trigger Article 16. Notwithstanding this, though, the Government stopped short of doing so in the hope that an alternative solution might be found.[26] On 13th October the EU responded with a series of papers that effectively formed the basis for the Windsor Framework introduced in 2023.[27]

It is now clear, however, that notwithstanding changes made through the Windsor Framework and some minor adjustments through Safeguarding the Union, that the underlying injustices that engage *'the serious …societal …difficulties that are liable to persist'* Article 16 safeguard, have not been addressed. Indeed, they have come much more sharply into focus by the holding of the first majoritarian vote in over fifty years (which as we explain actually represents multiple votes) in December in which every unionist was silenced on the most controversial proposition to come to Stormont since 1921, followed by the waiving of cross community consent in relation to the rejection of the Stormont Brake Application in January and then in relation the Applicability motion in April.

There is no prospect of these injustices being removed within the Windsor Framework as it currently exists, imposing the Irish Sea border, and they thereby render the Windsor Framework completely unsustainable in the terms of its own safeguards, as set out in Article 16. The Safeguards were built in not because there was no recognition of danger but precisely because these difficulties were recognised as a potential threat and that in the context of their becoming an issue derogation, and the need to find an alternative solution, would become imperative.[28]

Section 2] The impact of the Windsor Framework on the *operation of the single market in goods and services between Northern Ireland and the rest of the United Kingdom*:

The Windsor Framework and Services

In engaging with the wording of the terms of reference, we are now required, (see the introduction - since February 2024), to look at the impact of the Windsor Framework on the '*operation of the single market in goods and services between Northern Ireland and the rest of the United Kingdom*,' even though the Windsor Framework does not pertain to services. Given that Parliament added this into the terms of reference, such that the review 'may' look at this matter, it is not essential that it does but to the extent that the Review may look at this it is important for us to respond. Our submission is that given that the Windsor Framework pertains to goods not services, the review should do the following in relation to services:

First, acknowledge that the Windsor Framework does not pertain to services but to goods.

[25] Brexit: EU introduces controls on vaccines to NI - BBC News
[26] Northern Ireland Protocol: the way forward
[27] Protocol on Ireland and Nothern Ireland - Non-Paper - engagement with Northern Ireland stakeholders and authorities - European Commission
[28] On the scope of derogation please see Prof Alan Boyle: https://committees.parliament.uk/oralevidence/10906/html/

Second, acknowledge that while manufacturing is in difficulty, precisely because it is subject to the Irish Sea border, services are booming and in this they are assisted by the fact that they are not subject to the Irish Sea border.

Third, refuse to assess the impact of the Windsor Framework on both the goods and services sector *as if it applied directly to both* and then conclude that the Windsor Framework cannot be all bad because of the booming services sector.

Fourth, point out that the extended terms of reference together with the fact that the services sector are booming means we must take particular care when assessing the impact of the Irish Sea border. Specifically, we have to be aware that there is an important sense in which the service sector is effectively shielding us from the negative impact of the Irish Sea border, in the sense that: i) if the services sector was performing more normally we would be forced to confront more directly the negative effect of the Irish Sea border on the part of our economy to which it pertains, goods and ii) we cannot always depend on the cushion of a booming services sector.

The Windsor Framework and Goods

Having considered services, this submission will now turn to examine the Windsor Framework's actual area of impact, goods, by means of interrogating eleven areas of difficulty:

i) Unfettered Access

The Safeguarding the Union Command paper boasts about providing NI unfettered access through the Windsor Framework. For example, at para 8 it talks of 'new statutory protections for Northern Ireland's constitutional position and its unfettered access to the UK's internal market.'[29] Working on the basis of the plain meaning of words, Northern Ireland's enjoyment of unfettered access to the rest of the UK, implies not just unfettered access for selling, it also means unfettered access for buying. Moreover, and of particular importance for Northern Ireland as a small part of the UK economy, this does not just refer to buying and selling finished products, it also relates to buying and selling inputs to manufacturing processes from the wider UK.

However, the Safeguarding the Union claim to provide unfettered access is confounded on two bases by the Windsor Framework (UK Internal Market and Unfettered Access) Regulations 2024 published alongside the Command Paper on 31 January 2024 to give it effect. First, the legislation only addresses the movement of goods one way, from Northern Ireland to Great Britain, real unfettered access within an internal market means unfettered access in all directions within the boundary of the internal market. Second, Section 45B of the Internal Market Act nullifies the claimed unfettered access for goods going from NI to GB, by applying export procedures to the movement of goods from NI to GB in five different areas.[30] Thus the operation of the Windsor Framework has not provided unfettered access for movements from GB to NI in any sense (including on the green lane, see below), or even in all respects in relation to NI to GB movements.

ii) Replacing the Green Lane with the UK Internal Market System

The Safeguarding the Union deal also said (Feb 2024) that it was replacing the Green Lane with the creation of the UK Internal Market Scheme. On Page 14, Safeguarding the Union states:

'43. The measures the Government is committing to comprise:'

[29] https://assets.publishing.service.gov.uk/media/65ba3b7bee7d490013984a59/Command_Paper__1_.pdf
[30] https://www.legislation.gov.uk/ukpga/2020/27/section/45B

It then lists the actions it would take: a) to z)

On page 15, we are presented with the action:

*'e. **Replacing the green lane with a UK internal market system** governing the movement of goods which will remain within the UK, backed by new protections for historic trade flows and reductions in burdens and formalities.'*[31]

The sense here is that the Green Lane, introduced by the Windsor Framework, was what had been, and was now thanks to the new deal, *Safeguarding the Union*, being replaced in this respect by something better, the UK Internal Market Scheme.

There has, however, always been a difficulty with this because if we look back to the Windsor Framework command paper, published just under twelve months earlier, we discover that the Green Lane always was the UK Internal Market System.

Paragraph 10 of the Windsor Framework Command paper stated (Feb 2023):

'10. The agreement puts in place a full set of new arrangements, through a new UK internal market system (or green lane) for internal trade.'[32]

Indeed, all the guidance that already existed for the UK Internal Market System/Green Lane, continued to be held online and described as the Green Lane, post February 2024.

The logical problem is that you cannot replace the Green Lane with the UK Internal Market System when the UK Internal Market System is the Green Lane! Thus, the fundamentals of the Windsor Framework in relation to the movement of goods from GB to NI remain unchanged under *Safeguarding the Union*. The only change to border rules introduced by Safeguarding the Union came through the misnamed Windsor Framework (UK Internal Market and Unfettered Access) Regulations 2024, published alongside Safeguarding the Union, which inserted Section 45B into the Internal Market Act, imposing (as noted above) export procedures on the movement of goods from Northern Ireland to Great Britain in five different contexts.[33]

iii) The UK Internal Market System

Having established that the UK Internal Market System was introduced by means of the Windsor Framework from 2023, and not by means of any amendment to it through Safeguarding the Union, it is important to interrogate the operation of the UK Internal Market System that it introduced. To this end it is helpful to cite the whole of para 10 of the Windsor Framework.

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[31] https://assets.publishing.service.gov.uk/media/65ba3b7bee7d490013984a59/Command_Paper__1_.pdf

[32] https://assets.publishing.service.gov.uk/media/63fccf07e90e0740d3cd6ed6/The_Windsor_Framework_a_new_way_forward.pdf

[33] This applies export procedures to goods movements from Northern Ireland to Great Britain under Regulation (EU) No 952/2013 in relation to where goods: '1. are placed under a procedure listed in Article 210 of that Regulation, 2. are in temporary storage in accordance with Article 144 of that Regulation, 3. are subject to provisions of Union law falling within the second sentence of Article 6(1) of the Windsor Framework1 which prohibit or restrict the exportation of goods, 4. are placed under the export procedure within the Union in accordance with Title V and Title VIII of that Regulation, or 5. do not exceed EUR 3 000 in value and are packed or loaded for export shipment within the Union, in accordance with Article 221 of Regulation (EU) No 2015/2447.'
https://assets.publishing.service.gov.uk/media/641d999b5155a200136ad62f/Unilateral_Declarations_by_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_and_the_European_Union_in_the_Withdrawal_Agreement_Joint_Committee_on_export_procedures.pdf

'10. The agreement puts in place a full set of new arrangements, through a new UK internal market system (or green lane) for internal trade. This will mean that goods being sold in Northern Ireland will be freed of unnecessary paperwork, checks and duties, using only ordinary commercial information rather than customs processes or complex certification requirements for agrifood. In contrast, trade moving into the EU will be subject to normal third country processes and requirements. These new 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. In the process we have removed the border in the Irish Sea for internal UK trade, protecting Northern Ireland's integral place in the UK internal market.'[34]

It is through the so-called UK Internal Market System that arguably the clearest attempt to mislead is located. This should be confronted both in terms of the terminology of the 'UK Internal Market System' and the claims made about it in this paragraph.

The term 'internal market' has an established meaning. If you are in an 'internal market' you can move goods without encountering the costs of having to negotiate a customs or international SPS border. (There are two aspects to the costs of a customs border, one is the paperwork which exists regardless of whether duties must be paid, and the second is any duties that may have to be paid.) As soon as you arrive at such a border, you reach the limit of the internal market in which you have been located (A), its boundary, and if you cross that boundary, you move into another internal market (B).

Thus, the use of the term UK Internal Market System for the Green Lane arrangements is deeply misleading because the arrangements in question remove neither the customs nor the international SPS border. They simplify some of the paperwork, but they do not remove the reality of the border which confirms the end of one internal market, the GB internal market for goods, and the beginning of another, the EU internal market for goods. Rather than giving effect to a UK internal market for goods, the so-called UK Internal Market System is concerned with managing the movement of goods from the Great Britain Internal Market for goods to the EU Internal Market for goods. This is obvious to see, not least by means of comparing and contrasting: a) the requirements for moving goods from England to Wales to Scotland, in relation to which traders have unfettered access, and b) crossing the end of the GB Internal Market for goods, into the EU Internal Market for goods, through the misnamed 'UK Internal Market Scheme', a movement that is quite unlike an internal market movement in that it requires having an export number, filling in and submitting a customs and if necessary an SPS declaration (albeit simplified), and being subject to 10 to 5% identity checks at a border control post entering Northern Ireland (the EU Internal Market for goods).

While on the green lane the customs and SPS forms are simplified, the critical point is that they are still required, and the border continues to exist marking the end of the Great Britain internal market and the beginning of the EU internal market. (Indeed Article 14 of EU Regulation 2023/1231 makes it clear that the underlying default arrangement for the whole border is standard red lane experience). Moreover, the benefits of simplification are offset by additional requirements: having to successfully apply to join, and remain on, a trusted trader scheme (something you don't have to do in trading within the GB internal market), having to provide 'Not for EU' labels and having to demonstrate that the goods do not enter the Republic of Ireland. Thus, rather than talking in terms of a green and red lane, it is more honest to simply talk in terms of two different international border experiences with a similar weight, but different distribution of, frictions: a standard and alternative distribution of frictions.

[34] Ibid.

While the border friction costs associated with the standard border experience are concentrated on customs forms, SPS forms and possible border checks and duties, the border friction costs associated with the alternative border experience are shared out more widely. One obtains shorter customs and SPS forms but in return must: gain and keep trusted trader status, have 'Not for EU labels' and demonstrate sale in Northern Ireland etc. In this context there is nothing to say that a business that decides that trading with Northern Ireland is still worth its while, will necessarily be best served by the alternative border experience over the standard border experience. Moreover, we must also remember that there are many goods that are not eligible for the alternative border (green lane) (Category A and Category B goods) in any event and they will have to negotiate the border in the conventional way, that is to cross the border between the GB Internal Market and the EU Internal Market with full customs and SPS forms but without the burden of having to be accredited, provide Not for EU labels and prove the product does not reach the Republic and accept liability if it does.

The principal impact of the operation of the Windsor Framework UK Internal Market System is therefore to propagate confusion, because of its misleading name. If it was a product for sale, it would not meet the Trade Descriptions Act. It conveys the impression of an effect that is entirely contrary to its actual effect. It is a bit like taking a food product that is highly calorific, and marketing it as unusually un-calorific. It should be renamed to acknowledge its true purpose and effect, along the lines of 'the Windsor Framework GB – EU Alternative International Trade Border Experience.'

iv) The Internal Market Guarantee

The deceit surrounding the UK Internal Market System carries over directly into the Internal Market Guarantee set out by the Safeguarding the Union Command paper.

'A new internal market guarantee

87. However, we recognise some concerns about whether this UK internal market system alone will fundamentally protect internal UK trade over the long-term, and specifically whether internal UK movements will, in practice, end up moving through the red lane. This links to the broader concern that Northern Ireland could become less connected to the UK economy over time because of GB-NI trade being pushed into the red lane. The Government is determined to address this concern and take steps to protect the historic trade flows within the United Kingdom.

88. To address this, the Government is now setting out a new long-term, permanent UK Internal Market Guarantee governing the flows of trade between Great Britain and Northern Ireland. The guarantee will commit that more than 80% of all freight movements from Great Britain to Northern Ireland will be treated as 'not at risk' of moving onwards to the EU, and therefore moving within the UK internal market and customs territory, under this system. That means less than 20% of movements will be treated as 'at risk' of moving into the EU Single Market.

The concept of the UK Internal Market Guarantee is based on the notion that goods travelling from GB to NI using the Windsor Framework GB – EU Alternative International Trade Border Experience, can be presented as an internal market movement. There are three difficulties with this approach:

First, it is deceitful to pretend that movements based on this Alternative International Trade Border experience should be categorised as internal market movements. They are no more internal market movements than movements negotiating the border in the conventional way. They just engage an alternative distribution of the border friction costs none of which would be experienced if this was an internal market movement between England and Wales, or Wales and Scotland.

Second, the 'Internal Market Guarantee' is not only deeply problematic because it involves trying to generate the illusion that goods crossing the border, by means of the alternative international border experience, constitute internal market movements, but because there is no reason why one should try to ensure that 80% of goods move by means of one international border experience rather than another. Given that neither is an internal market movement, why should a GB business (that decides that, notwithstanding the new border friction costs, they will continue trading with NI) not be free to choose from the two different border friction cost profiles which is best for them, without being pressured by the 80% target for the alternative international border experience? The controversy is greatly compounded by the fact that the only reason why those who designed the Alternative Border Experience want 80% of freight to travel by this route is that they want people to believe that 80% of freight moving from GB to NI is actually moving within the UK internal market for goods, when it is actually crossing from the GB internal market for goods into the EU internal market for goods.

Third, to the extent that people work on the basis of the label on the tin, and allow themselves to be persuaded that movements from GB to NI constitute movements within the UK internal market for goods rather than movements across a trade border, they will assume there is less scope for economic growth between NI and GB than is actually the case. Specifically, they will conclude that the current level of trade is the best available rather than recognising the scope for significantly greater growth if only the artificially imposed border was removed.

v) The Border is Still Arriving: Manufacturing, Logistics and Article 16

Of crucial importance, rather than being taken away the border is still being constructed and in terms that are now having (especially since 1 May 2025) a very negative impact on Northern Ireland manufacturing businesses and on hauliers.

a) Manufacturing

'Northern Ireland's economy has for two hundred years been fully integrated with the economy of Great Britain. Even before the South broke away, dividing the island of Ireland, the key relationships between manufacturers in what became Northern Ireland were with Great Britain, and especially England, rather than the South of Ireland. That remains very much the case today – there are around 4,500 manufacturers in Northern Ireland but relatively few in the Republic. In this context Northern Ireland manufacturers have long depended on being in relationship with the rest of our home economy, Great Britain, which has supplied the overwhelming majority of our manufacturing inputs.

The threat posed by the imposition of a customs border dividing the United Kingdom of Great Britain and Northern Ireland into two has been to put Northern Ireland manufacturers in a position where instead of being able to access their inputs from the rest of their home economy, Great Britain, as would part of any other country, they now find that EU partitioning has made Great Britain a 'third' or 'foreign country' in relation to us. Those inputs can now only move from Great Britain to Northern Ireland with an export number, a customs declaration, border control post checks and paying duty where required.'

Of huge importance, though, from 1 January 2021 until 1 May NI 2025, manufacturers were able to shield themselves from the border when buying inputs from GB manufacturing businesses so long as the goods were transported in parcels. From 1 May, however, this shield was removed as the Irish Sea Border penetrated business to business parcels movements and business were denied any means of moving goods from GB to NI without encountering the Irish Sea Border.

In response to this some might point out that while 'business to business parcels' have encountered the border for the first time since 1 May, some of the movements can access easements under the UK Internal Market Scheme. Three points must be kept in mind:

'The first problem is that the promised easements are only available for companies with a turnover of up to £2 million. Put another way, if your company has a turnover of more than £2 million you will have to make full customs declarations. While £2 million might sound like a lot of money to an individual, it is not for a company that employs more than ten people. Although there are some movements (some food, health, and construction materials) in relation to which the EU has intimated a willingness to waive the £2 million limit, in most contexts it will apply.

The second problem is that even if you comply with the ceiling imposed on Northern Ireland aspiration by the £2 million threshold, not all goods movements are eligible for this simplified procedure in any event. The Government has divided goods into three categories for the purpose of the UK Internal Market Scheme.

**Category 1 goods which have to be moved, regardless of the size of your business, subject to full customs declarations. They are ineligible for the simplified procedure.*

**Category 2 goods which have to be moved, again regardless of the size of your business, subject to full customs declarations unless they do not fall under Category 1 and 'an H8 controlled declaration, or a I1 C&F controlled declaration is submitted.' Even in this event, however, full simplification is denied. 'An 8-digit commodity code is required as well as licensing and documentary controls,' and*

**Standard Goods which can be moved via the simplified process.*

Finally, even if you are under the £2 million threshold, and moving standard goods so you can access UKIMs easements, this does not have the effect of removing the border. You must still have an export number and provide information you don't have to provide when moving goods within an internal market. You must also apply to become UKIMS registered which is complicated and you have to be subject to ongoing checks. None of these burdens are placed on you if you move goods within an internal market, as in GB, or in any other country for that matter. These burdens testify to the presence of the border.'[35]

The message we are getting again and again - and especially since 1 May - is that the Windsor Framework constitutes an existential threat to Northern Ireland manufacturing such that on 20 May, Ashley Piggot, the CEO of AJ Power, told GB News that in seven years' time there will be very little manufacturing left in Northern Ireland.[36]

'We are still subject to all these duties etc and with rising costs our competitive situation is deteriorating every day and in all honesty in seven years I think there will be little or no manufacturing in Northern Ireland.'[37]

In this context – the threat of disinheritance from our manufacturing base - we again find ourselves running up against the Windsor Framework Safeguards set out in Article 16, and specifically the safeguard pertaining to 'serious economic difficulties that are liable to persist.' In this we must recognise once again that the Windsor Framework was devised in terms that recognised not that: i) the occurrence of serious economic, societal or environmental difficulties that are likely to persist or

[35] https://parliamentnews.co.uk/the-next-step-in-the-partitioning-of-our-country-took-effect-this-week
[36] Interview on GB News 20 May 2025 with Doug Beattie.
[37] https://x.com/GBNEWS/status/1924862940512989547

ii) trade diversion, were difficulties that must be absorbed within the four corners of the agreement but rather that their occurrence was recognised as being inconsistent with the continuance of the agreement, certainly in its current form.

b) Hauliers

In addition to the customs border easements introduced on the same day as the parcels border being of limited value because they have no bearing on companies with a turnover of more than £2 million, they also suffer from the difficulty that, to the extent that they bring simplifications that might be regarded as positive on one level, they simultaneously introduce greater complexity. Efforts to create easements in certain contexts has made managing the border logistically much more complicated. Hauliers now point out that the Irish Sea Border has become the most complicated international border to navigate in the world. Of course, this was already the necessary consequence of trying to divide an integrated economy into two, for the reasons set out in Section 1. However, the more sophisticated the workarounds to try to transcend this reality, the more the ensuing complexity has the effect of dragging these efforts down into new cost frictions, rather than liberating people from the costs of the border.

vi) Tariff Duties and the Windsor Framework

The imposition of the Windsor Framework border results in some goods moved from GB to NI having to pay EU tariff duties because the goods leave the GB internal market for goods, cross the international customs border and enter what is an all-Ireland/EU internal market for goods where you have to pay EU duties. The Government has suggested that this need not disadvantage Northern Ireland in any way because, although Northern Ireland businesses will have to pay the tariff, if they can demonstrate that the good has not gone into the Republic, they can claim the duty back through the Duty Reimbursement Scheme.

An example of this was provided by the owner of the Wooden Floor Company, Richard Snape, based in Belfast, in a contribution to the Nola Show on BBC Radio Ulster on 1 May 2025. The owner explained how the imposition of a 49% anti-dumping tariff on wooden flooring coming from outside the EU into Northern Ireland, from 16 January, was having a hugely negative impact on his business. He explained that he has shops in England and Scotland as well as Northern Ireland and that previously one of the strengths of the business was that if they were short of product in one part of the UK, they could move it to another, but this is no longer possible for movements from GB to NI. He further explained that even though he grew the business from Northern Ireland, where he lives, to England and Scotland, he was now having to say that some products he sells in GB are not available in NI.

It was pointed out that he could reclaim the tariff through the Duty Reimbursement Scheme, but he explained that it was so time consuming, first, having the pay the duty, then having to negotiate a very convoluted process to claim it back and then having to wait weeks if not months to be reimbursed, that he had decided not to use it. This had very practical implications:

'We are currently looking to expand our business. We have ten stores and we were looking previously at looking at opening more stores in Northern Ireland. Now its very difficult to make a case for doing that. The likelihood is that we will more stores in England and Scotland.'[38]

Then a bit later he underlined the point.

[38] https://www.bbc.co.uk/sounds/play/m002bfc5

'We are keen to grow the business. We are keen to make the business bigger. Where are we going to invest our time and money. Are we going to invest it in Northern Ireland where we are rapped up in lots of red tape or are we just going to go to Scotland and England where we don't have any of these problems. None of these problems. Surely it should be a level playing field in the UK – if we are still in the UK.'[39]

The presenter Stephen Nolan then said: '*The chilling thing that you have said is that do you pump money and create employment in England or Scotland or do you do it in Northern Ireland. And you are saying is that the incentive is to go elsewhere, out of here, cause its easier. It's less hassle.'*[40]

To this Mr Snape responded: *'It is very, very complicated. It's a full-time job just to get your head around this. It slows down all the trade. It makes it much more expensive to do business in Northern Ireland. It makes it much harder to do business in Northern Ireland.'*[41]

He also said: *'You will get all the money back eventually. But what's the incentive to do all that work. It's a huge amount of work. You'd nearly have to bring in an extra member of staff just to do all the paperwork that involved in this because its mammoth and again that's a burden you are putting on a small business. And whenever you are looking at an expansion, you could be paying for an extra member of staff to development your business rather than just dealing with government bureaucracy.'*[42]

Other NI businesses have expressed much the same concern to the TUV, resulting in expansion plans being shelved or redirected to GB.

vii) Tariff Duties on Goods from Beyond GB

The EU is, on average, more protectionist than the UK, and so businesses located in Northern Ireland already find themselves operating at a further duties disadvantage, compared with similar businesses based in Great Britain. The Government again argues that when this is the case it need not matter because the businesses in question can claim the difference back through their Duty Reimbursement Scheme. However, this response again fails to recognise that the process of applying for the Duty Reimbursement Scheme constitutes a very significant cost friction that comparable businesses in GB don't need to worry about. If businesses decide to still import, then they face the further additional burden, set out above, of trying to claim back the difference between the UK and EU rates and then waiting for the money to be paid with all the cash flow challenges that this involves. This will become a much bigger issue if the EU fails to do a trade deal with the USA before 31 July, and they impose retaliatory tariffs on the USA when the 90 days pause comes to an end.

viii) Free Trade Deals, Tariff Duties and the Windsor Framework

The Government has argued that Northern Ireland can benefit fully from UK trade deals. In the first instance, we can just as readily export goods produced in NI to the country with whom the UK has the trade deal on the basis of the trade deal as any other part of the UK. In the second instance, although goods entering Northern Ireland will be subject to the EU customs code, and be subject to EU tariffs rather than the terms of the trade deal, Northern Ireland businesses will still benefit the same because they can again use the Duty Reimbursement Scheme to claim back the difference paid on the EU tariff and what would have been paid if Northern Ireland was subject to the UK customs code rather than

[39] Ibid.
[40] Ibid.
[41] Ibid.
[42] Ibid.

the EU customs code. This, however, once again runs up against the major problems with the Duty Reimbursement Scheme (see above) and the decision of firms that import inputs from outside NI to pause expansion in NI.

ix) Trade Diversion and Article 16 of the Windsor Framework

Central to any assessment of the impact of the Windsor Framework on the *operation of the UK single* market for goods between Northern Ireland and the rest of the United Kingdom must be an assessment of trade diversion given the terms of the Windsor Framework including its Article 16.

'Article 16 (1)

'Safeguards

1. If the application of this Protocol leads to serious economic, societal or environmental difficulties that are liable to persist, or to diversion of trade, the Union or the United Kingdom may unilaterally take appropriate safeguard measures. Such safeguard measures shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation. Priority shall be given to such measures as will least disturb the functioning of this Protocol.'

As noted earlier, both parties agree that serious economic, societal or environmental difficulties that are liable to persist provide grounds for the derogation mechanism within the treaty to be initiated. Similarly, both parties agree that trade diversion is also a ground for initiating the derogation mechanism.

Again as noted earlier, this means that the Windsor Framework was devised in terms that recognised not that: i) the occurrence of serious economic, societal or environmental difficulties that are likely to persist or ii) trade diversion, were difficulties that must be absorbed within the four corners of the agreement but rather that their occurrence was recognised as being **inconsistent** with the continuance of the agreement, certainly in its current form.

In July 2021, the then Government published its Command Paper, *The Northern Ireland Protocol: the Way Forward* in which they said they believed the Article 16 red lines had been crossed and the UK had the right to trigger Article 16.

On trade diversion specifically, the UK Government stated at par 29:

'29. It is nevertheless clear that the circumstances exist to justify using Article 16:

● *There has been significant disruption to longstanding trade flows between Great Britain and Northern Ireland, and a significant, measurable increase in trade on the island of Ireland. The value of Ireland's exports of goods to Northern Ireland is trending far above historical levels in 2021: up by nearly 40% this year compared to the same period in 2020, and by more than 50% on the same period in 2018.10*

Some sectors particularly susceptible to that diversion, such as food and pharmaceuticals, have experienced even stronger growth. Meanwhile, as set out above, surveys continue to underline the disruption being caused to business with Great Britain, with movements of specific commodities (such as chilled meats) seeing particular impacts.

● *Such disruption to trade has in turn exacerbated the perceptions of separation and threat to identity within the unionist community which, in the context of Northern Ireland, constitute a particularly serious and pressing societal difficulty.*

● *Further societal and economic impacts are also clear: consumers face higher costs and real risks to goods supplies on which they rely; businesses face increased operating costs that put their survival in jeopardy; and, as many businesses and business organisations have made clear, if the flexibility provided by the grace periods were to be removed, there would be questions as to whether food supplies and parcel deliveries would continue without serious disruption, with significant knock-on impacts for day-to-day lives.'*[43]

Notwithstanding this, though, the Government stopped short of doing so in the hope that an alternative solution might be found. On 13th October the EU responded with a series of papers that effectively formed the basis for the Windsor Framework introduced in 2023.[44] Now that the Windsor Framework has had time to come into effect to a significant degree, and there is no prospect that the remaining aspects of its application will make things better (indeed, Stage 3 of the Not for EU Label requirements, which comes into effect on 1 July 2025 and the use of the newly constructed Border Control Posts also from July, will make things significantly worse), it is important to assess to what extent the EU's proposals to address the UK Government's Article 16 concerns have been addressed.

a. Trade Diversion Through the Border Mechanisms

Although the Irish Sea border arrived on 1 January 2021 because of the grace periods, significant aspects of it were not introduced until the Windsor Framework for the simple reason that, as Rishi Sunak pointed out on 27 February 2023, the Northern Ireland Protocol as originally conceived was unworkable. He helped to save the Irish Sea border by working with the EU to make what had previously been unimplementable, implementable, at least as far as SPS goods were concerned.

On 1 October 2023 the Irish Sea border for SPS goods arrived in relation to movements from GB to NI. Although the next stage of the implementation of the border, the Customs Parcels Border, was supposed to be introduced a year later, on 1 October 2024, it was postponed on 19 September 2024 until 31 March this year. However, on 19 March it was then postponed yet again until 1st May.

b. Trade Diversion Through Legislation

The application of some pieces of EU legislation have also had a far-reaching trade diversionary effect which has generated serious economic difficulty. The General Product Safety Regulation (2023/988) which came into force on 13 December, stands out. It means that now GB producers can only sell certain goods to Northern Ireland if they comply with the EU General Product Safety Regulation which includes the need to have, or establish, a representative based in Northern Ireland. We were made aware of 11 providers in the craft sector in GB who responded to the new legislation by deciding to cease servicing Northern Ireland. That is just one small sector. While we simply don't know how many providers withdrew across all sectors, it is likely to be significant, thereby further impacting trade diversion. It is particularly instructive to watch the video in the link below in which a GB provider explains not only why they have had to stop supplying Northern Ireland, but why they feel that in this Northern Ireland has been abandoned by the rest of the UK. They state: *'I am no longer shipping to Northern Ireland and it kills me to have to say that. I genuinely feel for those that live in Northern Ireland because they have essentially been cut off from the rest of the UK and that is, that's awful - like - I can't even put it into words.'*[45]

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[43] Northern Ireland Protocol: the way forward

[44] Protocol on Ireland and Nothern Ireland - Non-Paper - engagement with Northern Ireland stakeholders and authorities - European Commission

[45] https://x.com/NornEye/status/1917865022144864561

The Trade Diversion Data

Given that key parts of the border have now been functional since October 2023, albeit without the requisite border control posts that are supposed to start enforcing the division of our country from this July,[46] it is now possible to stand back to consider NISRA and ONS data to assess whether the Windsor Framework adjustments to the Protocol proposed by the EU in October 2021 have fixed the presenting Article 16 trade diversion difficulties.

NISRA figures show that Northern Ireland's purchases of goods increased from 2020 to 2023 by 24% from GB, but by 50% from the Republic of Ireland, meaning twice the growth rate in the buying of goods into Northern Ireland that would previously have come from our integrated United Kingdom economy.[47]

Dr Esmond Birnie of Ulster University commented on this data:

'The fact that NI's purchases from RoI grew at twice the rate of those coming in from GB ***is highly indicative of trade diversion.*** *That NI purchasers are shifting from GB suppliers to RoI ones given the frictions with which Irish Sea trade is now associated.' Bold added.*[48]

The Office for National Statistics 'Business Insights and Conditions Survey', meanwhile, states that 13.1% of currently trading manufacturers based in GB had sent goods to Northern Ireland in the 12 months to the end of 2024. This contrasted with an equivalent figure of 20% for the end of 2020. Thus, there has been a dramatic fall in the number of manufacturers supplying goods to Northern Ireland, the figure nearly halving in just four years.[49]

The ONS data for 2024 tells us more: 11.7% of companies said they have stopped trading with Northern Ireland.[50] Why? Because even when crossing the green lane, you still need to have: an export number, to have successfully applied to join a trusted trader scheme, to have completed customs and (where relevant) SPS forms, be subject to 100% documentary checks (10 to 5% identity checks at border control posts) and have Not for EU labels etc.

Parcelhero's Head of Consumer Research, David Jinks, a Member of the Chartered Institute of Logistics and Transport observed:

'Only 15.1% of retailers based in Great Britain said they had sent items to Northern Ireland in the last 12 months compared to 77.6% who said they had not, while 4% said they had stopped sending to NI as of December 2024.

He continued:

'As a result of these (Irish Sea Border) changes, the ONS figures reveal 32.7% of Northern Ireland-based businesses reported challenges related to the NI Protocol agreement, with 9.6% saying differences in rules and regulations were a major cause of these issues. Of businesses based in England and trading with NI, 11.3% reported significant challenges around the Protocol agreements.

[46] https://questions-statements.parliament.uk/written-questions/detail/2025-03-11/37521/
[47] Dr Esmond Birnie Press release, 11 December 2024
[48] Ibid.
[49] As the UK braces for new Northern Ireland parcel rules, costs are already rising and volumes falling | London Daily News
[50] Ibid.

'The knock-on effects of increased red tape and delays mean a whopping 28% of NI-based companies said transport costs have become a challenge and 13.3% of companies based in England also reported significant concerns about the cost of shipments to NI.

'Ultimately, all this upheaval means that 25.9% of transport & storage sector companies (the category which includes logistics, parcels, haulage and warehousing businesses) have seen their volumes to NI decrease in December compared to the previous month. Only 1.9% reported increased activity.

'Of course, Christmas peak and issues with Holyhead Port following Storm Darragh will have impacted these figures, but they do build on the previous comparable ONS data, from June 2024, when 34.4% of transport & storage firms said their volumes to NI had decreased. In June, just 1.9% of transport & storage sector companies said goods volumes to NI had increased and 11.7% said they had now stopped moving goods to NI entirely.

'Businesses will be required to upload commercial data to their traders' goods profile to reduce the administrative burden each time products are imported into NI. Parcel companies must join this scheme by 31 March and ensure they gather the correct data from their customers and that it is integrated with HMRC.

'It's no wonder that some major couriers have announced that they will now only provide a B2C/C2C service to Northern Ireland and will not cover B2B movements. Similarly, carriers are warning that they may not be able to move parcels into Northern Ireland if the data requirements haven't been met by their customers.'[51]

Not a Surprise

The existence of Trade Diversion is no surprise. By May 2023 businesses were planning for the arrival of the SPS border in October 2023. This was demonstrated by a slide in a Tesco presentation to their supply chains that month, which was entitled 'Packaged Food approach. For products currently moving from GB to NI.' They said that under the Retail Movement Scheme from 1 October they would want to get as much product as possible from ROI to avoid both the Green and Red lanes. Under the sub-heading *'Ireland Supply Routes' the slide says: -*

'More Direct from the EU

- Move all common products from the ROI DC to NI stores

- Align some range with the ROI range'

For those who might be tempted to say, what does it matter if people in Northern Ireland can now get the goods they want from the Republic of Ireland instead? The answer is, first, that they cannot always get what they want from the Republic of Ireland, certainly not at UK prices, and second, that this is having the effect of quietly changing, by stealth, without a prior referendum, the constitutional-economic foundation upon which Northern Ireland rests.

Until 1 January 2021, Northern Ireland was a fully integrated part of the UK economy, and this economic reality was in harmony with the underlying constitutional reality. The advent of the developing Irish Sea Border, however, is gradually replacing the UK single market for goods with a GB single market for goods, and an all-island/EU single market for goods, wherein the all-Ireland economic and constitutional reality are being aligned by virtue of the new single market being underpinned by laws made by Dublin and the rest of the EU. The immediate impact of this change is

[51] Ibid.

to lay the foundation for an all-island economy, the prerequisite of an all-Ireland state, that will re-route previous trade through the new all-island framework that the new legal regime creates.

The Reasons for Rejecting the Triggering of Article 16

In explaining why this is a serious matter that cannot be ignored, it is helpful to provide a considered response to arguments made to the contrary by the Secretary of State on 4th March in his response to an adjournment debate secured by the leader of the TUV on trade diversion, Jim Allister KC MP.

First, the Secretary of State suggested that there was no case to answer because lorries are still crossing the border. Clearly if lorries could not move across the border that would be a huge problem, but that is not the 'problem threshold' set by Article 16 which rather than limiting itself in this way, engages with trade diversion. There are two problems with his response:

In the first instance, in the context of trade diversion rather than trade cessation, lorries still move in the sense that they can and do travel from GB to NI but do so less frequently and or carrying less cargo than would otherwise be the case. The problems associated with the Secretary of States's attempts to raise the Article 16 threshold so dramatically in this context are compounded on two bases:

Article 16 sets out four red lines, three of which have a higher threshold in that they must be 'liable to persist' and one red line, trade diversion, with a lower threshold, which is simply met by the presence of trade diversion. The deliberate decision to contrast trade diversion with the higher thresholds associated with the other red lines makes the Secretary of State's attempt to increase it so dramatically, particularly problematic.

Moreover, this presents a real consistency problem for the Secretary of State because he has recently made so much of his commitment to upholding thresholds. Although when selling the Stormont brake much was made of the fact that it would 'fix the democratic deficit', when announcing his decision not to allow the first attempt to pull the brake, the Secretary of State pointed out that the scope for applying the Brake is actually very limited, having a high threshold on the basis of which he had to reject the attempt to pull the brake. His attentiveness to thresholds is no doubt commendable but he cannot cherry pick his thresholds without his actions effectively becoming discriminatory, if he dutifully follows them when the effect is to disadvantage unionists and then equally ignores them when the effect is again to disadvantage us.

Second, the failure of the Secretary of State to engage with the presenting threshold, is further underlined by the fact that he focuses on just movement across one border, when any assessment of trade diversion requires assessment of movement cross what are effectively two borders. Specifically, trade diversion would occur in the event of a reduction of trade flows from GB to NI, together with an increase in trade flows from ROI to NI. He remained silent on the latter.

Third, the Secretary of State resisted triggering Article 16 on the grounds that implied that this would give effect to an improper unilateralism and be contrary to the agreement. It is difficult to sustain this position because it ignores the fact that Article 16 is a critical part of the agreement which actually acknowledges that it is possible that the implementation of the agreement might have some negative consequences and, if it does so in the four areas specified, to the thresholds specified, then the parties can commence derogation proceedings. If the Secretary of State is fully committed to the agreement, then he must be fully committed to the Article 16, its red lines and the fact that having contradicted the trade diversion safeguard (in addition to the societal difficulty safeguard, see Section 1), we have to recognise that the Windsor Framework is now failing in its own terms.

The critical point to make in assessing the impact of Article 16 today compared with assessments made in July 2021, is that they come after the EU's best offer to help refashion the Protocol so that it does not contravene Article 16 has been tried, given a good chance and found wanting. What is clear is not simply that the trade diversion safeguard has been crossed but that it has been crossed after a huge amount of energy and effort has been expended through the development of the Windsor Framework to try to fix the presenting difficulties and yet it is still violating its own red lines. Today the Windsor Framework stands before us with an operational output that is actively contradicting its own Article 16 red lines.

In a context where it is not possible to assess the operation of the Windsor Framework, which is partly defined in terms of Safeguards, without having regard for the operation of those Safeguards and their impact on the Windsor Framework as a whole, we must then engage with the fact that one of the red lines - trade diversion - has been crossed. **Given that the effective deployment of the Safeguards depends on the actions of the UK Government and the EU, one would have to say that if the state parties are not prepared to act in these circumstances, the Safeguards are effectively voided and the integrity of the treaty, as a treaty that embraces Safeguards, breaks down.**

x) Dual Market Access

Having considered all the above difficulties with the operation of the Windsor Framework, it is now possible - drawing further on the above - to conclude this section by addressing the problems with the claim that has generated the greatest level of confusion regarding the operation of the Windsor Framework, 'dual market access.' This opportunity is referenced by para 151 of *Safeguarding the Union*. It lies behind talk of NI becoming 'the Singapore of the Western Hemisphere' and 'the world's most exciting economic zone.'[52]

Dual market access suggests that Northern Ireland is in a privileged position in that it is part of the UK Internal Market for goods, thus having access to the rest of the UK, while also enjoying full access to the EU Internal Market. Given that all countries in the western world enjoy market access to each other, subject to the need to negotiate a customs and SPS border, if dual market access is to confer a distinct benefit it must involve more than this. Specifically, it must involve being able to access both the markets as if one is located in both markets, without having to negotiate the customs and international SPS border ordinarily between them. If true, this certainly would confer an advantage on Northern Ireland, but, as we have already seen, it is not true because the removal of the NI-ROI border has been in return for the creation of the Irish Sea customs and international SPS border. While Northern Ireland's position is unusual, it does not amount to dual market access in the above sense and the practical impact of its unusual situation actually confers upon us a distinct net disadvantage not a net advantage.

When we get past the term 'dual market access' which suggests a balanced benefit, both ways, to the actual operation of the Windsor Framework, what we find is a striking asymmetry. On the one hand, NI enjoys two-way unfettered access to sell both to the Republic and GB, but only unfettered access to buy from the Republic. The damage caused by this asymmetry is obscured for presentational purposes by a deliberate attempt to encourage people to focus on the thought that what an economy needs to thrive is the freedom to sell its goods so that being afforded the opportunity to do so without encountering a trade border in relation to a foreign country, the Republic of Ireland, in addition to the rest of its own country, Great Britain, places Northern Ireland at a massive advantage. In reality this arrangement places on NI two serious disadvantages:

[52] https://www.youtube.com/watch?v=Xo9aNW_g7R4

a. Production

If the Northern Ireland economy was self-sufficient, only engaging with the outside world for the purpose of selling completed products, the asymmetry of the Windsor Framework would present an opportunity. In truth, however, this is not the position in which Northern Ireland finds itself. In the first instance, we must engage with the fact that in the contemporary global economy no economies are internally self-sufficient, rather they depend on inputs from other parts of the world into their production processes. In the second instance, and more importantly, we must recognise that in the case of Northern Ireland this point is compounded many times over because, far from being an economy in its own right, it is only a small part of the wider UK economy, into which it has been completely integrated for two hundred years. Even before the South broke away, dividing the island of Ireland, the key relationships between manufacturers in what became Northern Ireland were with Great Britain, and especially England, rather than the South of Ireland. That remains very much the case today – there are around 4,500 manufacturers in Northern Ireland but relatively few in the Republic. In this context Northern Ireland manufacturers have long depended on being in relationship with the rest of our home economy, Great Britain, which has supplied the overwhelming majority of our manufacturing inputs. As such its ability to make things has been based on its ability to acquire inputs from the rest of its home economy, Great Britain.

As noted above, thanks to the Irish Sea border, companies in Northern Ireland with a turnover of £2 million or more buying production inputs from Great Britain are now forced to face a full customs border, as if those inputs come from a foreign country, significantly increasing costs, denting profit margins and the viability of production. Businesses might be able to sell their goods freely to GB, but they can no longer do so competitively because their input production costs have increased significantly. In this context businesses, even those with an HQ in NI, but bases elsewhere, are pausing expansion and looking to instead grow on their other sites. Furthermore, although it has been said that goods moving from NI to GB will have unfettered access such that the Irish Sea border is a one-way border (West East), the truth is more complicated. As noted earlier, Section 45B of the Internal Market Act imposes export procedures on five categories of goods which can now only move from Northern Ireland to Great Britain as if moving to a foreign country.

The threat posed by the imposition of a customs border dividing the United Kingdom of Great Britain and Northern Ireland into two has been to put Northern Ireland manufacturers in a position where instead of being able to access their inputs from the rest of their home economy, Great Britain, as would part of any other country, they now find that EU partitioning has made Great Britain a ‘third’ or ‘foreign country’ in relation to us. Those inputs can now only move from Great Britain to Northern Ireland with an export number, a customs declaration, border control post checks and paying duty where required. The cost of negotiating the border is such that businesses are now pausing expansion in Northern Ireland in favour or elsewhere.

b. Purchasing Goods

Northern Ireland’s economy has benefited greatly from being part of the sixth largest economy in the world because it has accessed the supply chain economies of scale that come from being part on an economy of nearly 70 million, rather than just 5. It is precisely because the Republic has not benefited from these economies of scale that its prices tend to be higher and why people from the Republic will often do their shopping in Northern Ireland.

The truth is that being fully part of a UK single market for goods is much more beneficial for the NI economy than the current arrangements. In the first instance, it gives us unfettered access to a proximate market of nearly 70 million both for the purchase of production inputs and then the sale of the finished products. In the second instance, the Republic does not provide the kinds of production inputs that NI has gained from GB, so manufacturing businesses in NI cannot simply take the inputs they once received from GB from ROI. The truth is that notwithstanding the fact that NI has been in the same internal market as the Republic since 1993, GB is a much more important market and source of inputs for NI than ROI.

In this context, rather than the operation of the Windsor Framework affording Northern Ireland the opportunity to become 'the world's most exciting economic zone', we have instead been subject to very serious disadvantage. Far from giving us the best of both worlds, Windsor has actually given us the worst of both worlds. On the one hand, the operation of the Windsor Framework joins us with a smaller proximate economy with which we have, for many economic purposes, very little in common, and in relation to which we usually cannot source our raw material requirements.[53] On the other hand, it frustrates our access to the larger proximate economy in which we have been fully integrated for over 200 years, and from which we have been able to source many of our raw material requirements. As such the operation of the Windsor Framework has placed our economic wellbeing in relation to the goods economy in jeopardy, although we have been protected so far by a buoyant service sector in relation to which the Windsor Framework does not apply.

The Northern Ireland Department of economy should stop confusing the public by talking about 'dual market access' and acknowledge that the price paid for full access to the small proximate economy with which we are not well integrated (the Republic of Ireland) has been that we have been pushed out, to a very significant degree, of the much bigger proximate economy of which we have been a fully integrated part for more than two centuries (the UK). The facts speak for themselves. Despite a former President of the United States promising that scores of American companies were lining up to invest on the back of the Windsor Framework,[54] both the Head of Invest NI and the Economy Minister acknowledged in October and December last year that not a single inward investment project has been brought forward to access these and other opportunities in the last four years. [55]

The above is likely to provoke two attempted refutations:

First, it will be said (as the former Economy Minister said) that notwithstanding the absence of any FDI in response to NI being afforded the unique opportunity of dual market access, when businesses are told about dual market access they are interested. [56] If a business believes that dual market access is on offer then, of course, they will be interested as any business would be. The problem is that, for the reasons set out above, what the term dual market access suggests, being part of two markets at the same time without international SPS and customs borders, is not on offer. When businesses find this out, they quickly abandon the idea. After four years we can be sure that had there was a distinct advantage, businesses would have moved in to exploit it.

[53] Policy Exchange - The Island of Ireland Two Distinct Economies, 2022
[54] https://www.business-live.co.uk/economic-development/biden-companies-lining-up-invest-26696197
[55] https://niassembly.tv/committee-for-the-economy-meeting-wednesday-16-october-2024/ 1 hour 16 minutes https://www.northernirelandworld.com/news/economy-minister-confirms-no-uptake-in-foreign-direct-investment-due-to-so-called-dual-market-access-4906128
[56] Ibid.

Second, it will be said, 'but some businesses have told me that they like dual market access.'[57] Given that the Windsor Framework does not offer dual market access in a way that, for the reasons set out above, brings anything other than a net negative consequence for NI, what is meant by this is that, given the choice, businesses that trade exclusively or primarily with ROI want to keep the Windsor Framework with the border in the Irish Sea and oppose the application of an international SPS and customs border between NI and ROI. The problem with this logic is threefold:

In the first instance, the act of prioritising what they believe to be in their personal economic interest, keeping the border in the Irish Sea rather than on the international border, means that they are giving priority to their economic interest over their civic rights and the civic rights of all the people of Northern Ireland to stand for election to make all the laws to which they are subject.

In the second instance, even if some NI businesses believe that they are better off with the Irish Sea border than an SPS and customs border on the international border, this would not change the fact that this would be a net negative for NI as a whole. In recognising the greater economic importance of GB than ROI to NI one must appreciate that in 2023, while the sale of goods from NI to GB was worth £11.6 billion and the purchase of goods by NI from GB was worth £13.4 billion, the sale of goods by NI to ROI was only worth £6.5 billion and the purchase of goods from ROI to NI was only worth £3.3 billion.[58]

In the third instance, the concerns of those who do depend on selling to ROI, will be inflated if they believe that the only way of running the border between NI and ROI is on a similar basis to the Irish Sea Border. In truth the border challenges can be addressed through Mutual Enforcement and are in any event less divisive and destructive than the Irish Sea Border which divides a domestic economy, for all the reasons set out above.

Rather than offering 'dual market access' what the Framework really offers is a 'different market access' and a 'different market access' that greatly disadvantages the larger part of the NI economy.

Given the above, it was no surprise to hear businessman Richard Snape on the Nolan Show recently note that the much-vaunted dual market access, giving us a competitive edge on GB competitors, is a myth:

'I have asked lots of people, what are the advantages and I cannot see any. All I can see is more and more obstacles to make life more and more difficult for business people in Northern Ireland. There's no benefits.'[59]

[57] 'I have met businesses that have told me how they are taking advantage of that dual market access. I meet businesses in my constituency that can see what Northern Ireland has got out of these unique arrangements.' https://hansard.parliament.uk/Commons/2025-03-04/debates/17D4FF98-49AD-43D6-90C7-BC5C1F9BF55F/details

[58] https://www.economy-ni.gov.uk/news/northern-ireland-economic-trade-statistics-2023-northern-ireland-annual-business-inquiry

[59] https://www.bbc.co.uk/sounds/play/m002bfc5 Richard Snape on the Nolan Show.

Part 2. 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.*

This submission now turns to the second part of the legal requirement of the review, set out in paragraph 7 of the unilateral declaration. In doing so, two points must be made immediately given the findings so far.

First, the implications of any decision to continue with the Windsor Framework Irish Sea border, would be very negative for the reasons set out in Part 1. Moreover, for the reasons set out in Part 1, the difficulties it highlights are likely to get worse, with all that this means for Article 16 both in terms of serious economic difficulties liable to persist, serious societal difficulties liable to persist and trade diversion, and the impact that the crossing of these red lines has on the integrity of the Windsor Framework and any attempt to force its continuation in the context of the crossing of these red lines. Indeed, the undergirding structural problems set out in Part 1 are such that the search for further mitigations becomes implicated in seeking to excuse the perpetuation of injustice in a way that does not honour the Windsor Framework that was designed to include Article 1 and 16.

Second, it is not possible to meaningfully assess the implications of any decision to discontinue the current arrangements provided by the Windsor Framework or any decision to terminate them, without considering the alternatives. Hitherto, these have effectively been silenced through the development of what has been a very effective, but completely false, narrative that there is no alternative to the Irish Sea border. In what follows this submission will first unpack the problems with the 'no alternatives' narrative, before turning to consider the alternatives.

Calling Out the No Alternatives Narrative

In coming to terms with the 'no alternatives' narrative, it is important understand how the failure of democracy, manifested in the disenfranchising implication of the functioning of the Windsor Framework, is linked to a prior failure of democracy. When setting the terms of the Brexit referendum, thought was given to the idea that there should effectively be four votes, requiring a Brexit majority in each UK nation, England, Wales, Scotland and Northern Ireland, in order for Brexit to take place. Although this was considered, it was rejected because this would involve denying the union and treating the four constituent parts of the UK as four separate countries, as if the union did not exist. The Prime Minister of the time put in these terms: *'I thought this suggestion [a majority for each nation] was dangerous: requiring separate majorities would encourage separatism. We were one United Kingdom, and should either stay together or leave together.'*[60]

In this context the question on the ballot paper was both considered and deliberate. No one who voted to the leave the EU in the referendum voted for anything other than for the UK to leave the EU because no one was given the option of voting for Wales to leave, or England to leave, or Northern Ireland to leave or Scotland to leave. The referendum, therefore - the biggest expression of democracy in the history of the UK - still has not been honoured because part of the UK effectively remains in the EU. Not one of the 17 million people who voted that the UK should leave the EU, secured what they voted for. What they got was an arrangement whereby rather than the UK coming out from the EU and its law, part of the UK remained subject to it, such that an international SPS and customs border then had to be imposed between GB and NI, declaring that NI is a foreign third country in relation to GB. In this the referendum plainly has not been honoured.

[60] David Cameron, *For the Record*, William Collins, P. 625.

Some pretend that this imposition is what those who voted for Brexit, voted for, but that is self-evidently absurd and an offence to all those who voted for the UK to leave, especially to those living in the part of the UK that has, rather than leaving the EU: i) become even more subject to it, such that EU laws are made for it without any representation in the EU legislature and ii) is now told that the rest of what they thought was there country, is in fact a third country, a foreign country. Lest anyone might then respond by saying, ok, no one has got what they voted for (either leave of remain) but those who voted leave have got as much of what they voted for as they can get, this is logically completely absurd.

In the first instance, it is not possible to argue that people in Northern Ireland have achieved as much of Brexit as they can get because rather than taking back control, the partitioning of Brexit through the Irish Sea border has resulted in Northern Ireland giving far more powers away than was the case before Brexit, including to the humiliating point of being disenfranchised in 300 areas of law. In the second instance, the simplest form of Brexit would have been Brexit without a deal which would have resulted in the UK leaving the UK as one country, without the imposition of an Irish Sea border. Far from being impossible, this was the default outcome.

To this the point might be made that Parliament decided against a No Deal Brexit. That may be so, but it does not change the fact that the disenfranchisement of Northern Ireland is not a part of Brexit. It happened because Parliament did not: first, make it absolutely clear that while things can be traded in negotiations, no self-respecting nation, including the United Kingdom, could ever countenance, even for a moment, talk of trading aspects of the citizenship and enfranchisement of its own people and, second, insist that nothing less than a solution like mutual enforcement, that did not depend upon trading citizenship, in violation of the Belfast Agreement, could be contemplated.

Mindful that the Northern Ireland Protocol was initially imposed through a Westminster vote in which every Northern Ireland member voted against, on the strength of the votes of MPs from England, Wales and Scotland (resurrecting memories of the flooding of the Treweryn valley in Wales and the imposition of the poll tax a year early in Scotland), it is striking that there has been an attempt by some GB parliamentarians to try to justify their failure and the measures they took against us on two bases:

First, there is the pretence that the arrangement is necessary to protect the Belfast Agreement, when rather than upholding the Belfast Agreement the Windsor Framework has placed it in jeopardy. As demonstrated in Part 1, far from prohibiting the provision of an SPS or customs border, as if its purpose was to minimise the border, the effect of the Belfast Agreement was to secure recognition of the UK's international borders by the Republic for the first time in sixty years and an acknowledgement therein of the UK's right to make its laws with respect to its territory, subject to the provision of a border poll in the event certain conditions are met. This also came with the protections set out in the consent, cross community consent and democracy provisions. All these have also been violated by the operation of the Windsor Framework. None of this is to say that avoiding a hard border is not desirable, but at no point does the Agreement prohibit an SPS or Customs border being located on the international border, (with tax, excise, currency etc), even as it does prohibit the violations of the consent, cross community consent and democracy protections, all of which stand as international legal obligations, sadly ignored by domestic legislation.

Second, there was an attempt to try to justify this approach by means of GB politicians seeking to persuade Northern Ireland parliamentarians, and no doubt themselves, that this was/is a good deal for Northern Ireland. While it was true that the people of Northern Ireland would not be able to stand for election to make the laws to which they are subject in 300 areas, it was a price worth paying because, in return, Northern Ireland would be given the opportunity to become 'the Singapore of the

West' and 'the worlds most exciting economic zone'[61] on account of being uniquely blessed with 'dual market access.' We were told by GB MPs that their constituents lacked the special opportunities with which we were privileged, and we should be happy.[62] In truth, however, the whole construct was an elaborate ruse because as we have seen, there is no such thing as dual market access. In fact, Northern Ireland is not only being saddled with a civic negative in disenfranchisement but also by serious net economic disadvantage for all the reasons set out in Section 2 of Part 1.

In considering the option of terminating alignment with the Windsor Framework, attention must be given to the fact that while it was deeply insulting to be moved from being a full democracy to a partial democracy and a partial EU colony (in violation of the norms of democratic society, not to mention the special protections afforded by the consent, cross community consent and democracy protections in the Good Friday Agreement), it was even more insulting and distressing to have people try and pretend that this was in our economic interest.

Acknowledging the Alternative

The principal argument against Mutual Enforcement is that the EU does not like it. This is used vigorously by champions of the status quo to try to shut down/mock any discussion about change.

The truth, however, is rather more nuanced.

In the first instance, it is important to recognise that the concept of mutual enforcement came from within the EU. Far from being 'magical thinking' mutual enforcement is a solution that was developed by Sir Jonathan Faull then a Director General in the EU Commission together with Prof Joseph Weiler and Prof Daniel Sarmiento.[63]

In the second instance, while it was of real interest to the EU, it was not necessary from their point of view because of the leverage afforded them by the December 2017 'Joint report on progress during phase 1 of negotiations under Article 50 TEU on the UK's orderly withdrawal from the EU.'[64] This enabled them aim for either the backstop or Irish Sea border which was more than they would have secured, from their point of view, through Mutual Enforcement. In this, the key point is that while Mutual Enforcement ended up not being their preferred option, it was always a possibility, even though they would never admit it, for want of protecting what was for them, and the ROI, a better outcome, the Irish Sea border.

In this context it is well worth reading Prof JHH Weiler's reflections after the EU decided against Mutual Enforcement written up in the International Journal of European Law:

'The backstop would guarantee the integrity of the Union's customs and regulatory territory but at the expense of the integrity of the UK's customs and regulatory territory, and de facto and de jure force the UK into a permanent customs and regulatory union. Chapeau to the Union negotiators for having

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[61] https://www.youtube.com/watch?v=Xo9aNW_g7R4

[62] 'As was said by the hon. Member for North Down (Stephen Farry), we want Northern Ireland to take advantage of the fantastic opportunity it has: my constituents do not have access to the single market, but his constituents do.' https://hansard.parliament.uk/Commons/2023-02-22/debates/BAA684C5-431E-4B46-B6AE-F8A7A2A1399B/details

[63] https://verfassungsblog.de/an-offer-the-eu-and-uk-cannot-refuse/
This has been developed further by the Centre for Brexit Policy: Mutual Enforcement: https://centreforbrexitpolicy.org.uk/publications/mutual-enforcement-the-key-to-restoring-government-in-stormont/

[64] https://www.gov.uk/government/publications/joint-report-on-progress-during-phase-1-of-negotiations-under-article-50-teu-on-the-uks-orderly-withdrawal-from-the-eu

the UK swallow that frog without even noticing. Do you recall the British dismay (including May herself) when the UK Attorney General finally made that clear to all and sundry? But was it in the interest of the Union to push for this solution - a solution which a country like, say, France would never ever accept for itself?

A forced de facto customs and regulatory union. Full disclosure. Sir Jonathan Faull, Daniel Sarmiento and I put forward a much discussed and much contested alternative approach (The Financial Times called it the Win-Win Solution - we continue to believe that there were answers to all the objections that were raised, but the Commission team seemed to be locked into their repeated assurance that there were no alternatives to the backstop). Be that as it may (or May), eventually the original backstop had to be modified, though at the price of a huge concession by Boris: the introduction, however disguised, of a customs frontier within the UK. But does anyone believe that is a stable solution?' [65]

Moreover, the EU now has a responsibility to revisit what it previously dismissed for two reasons:

In the first instance, the actual effect of the Windsor Framework, is being to perform the biggest reversal of democracy since the introduction of universal suffrage and we cannot believe that this is what they really intended. This represents a threat to their brand and aid programme where aid is provided on the basis of conforming to democratic practice.

For example,

'40) As the respect for democracy, human rights and the rule of law is essential for sound financial management and effective Union funding as referred to in the Financial Regulation, assistance could be suspended in the event of degradation in democracy, human rights or the rule of law in third countries.[66]*'*

This is very awkward given that the actions of the EU in insisting on the Irish Sea Border needlessly degrade democracy, disenfranchising 1.9 million people in 300 areas of law, when alternative mechanisms that would avoid this like Mutual Enforcement and Alternative Arrangements exist.

It would be deeply unfortunate for the EU if its standing as an exporter of democracy was placed in jeopardy by its own role in the degrading of democracy by means of disenfranchising 1.9 million people, who had previously been fully enfranchised for over 100 years, in 300 areas of law.

In the second instance, the EU has made a very special commitment to the Belfast Agreement. If the EU Commission President had done so in a speech and it was subsequently shown that rather than supporting it, the Windsor Framework was undermining and destroying it, then there would be an urgent need for the UK Government and others to acquaint the EU with this fact so that adjustments could be made to ensure that the operation of the Windsor Framework was faithful to the mission of upholding the Agreement. However, in our case the imperative is far more developed on account of the fact that the commitment is set out in detail in writing in the foundational provision of the Windsor Framework itself:

'Article 1

Objectives

[65] Joseph H.H. Weiler, Brexit - apportioning the blame, European Journal of International Law. 2019, 30(4), 1089-1093, © 2020 Thomson Reuters. https://www.studocu.com/en-gb/document/university-of-hertfordshire/european-union-law/brexit-apportioning-the-blame/17150924

[66] https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32021R0947

1. This Protocol is without prejudice to the provisions of the 1998 Agreement in respect of the constitutional status of Northern Ireland and the principle of consent, which provides that any change in that status can only be made with the consent of a majority of its people.

2. This Protocol respects the essential State functions and territorial integrity of the United Kingdom.

3. This Protocol sets out arrangements necessary to address the unique circumstances on the island of Ireland, to maintain the necessary conditions for continued North-South cooperation, to avoid a hard border and to protect the 1998 Agreement in all its dimensions.'

The integrity of the Windsor Framework will break down if its operation is not kept accountable to its objectives set out in Article 1 which requires ongoing assessment. As Section 3 of Part 1 of this submission demonstrates, far from upholding the Belfast Agreement in a fulsome way, the operation of the Windsor Framework is not even doing so inadequately. The operation of the Windsor Framework is rather undermining, unbundling, and thereby effectively destroying the Belfast Agreement, such that the Windsor Framework is now failing in its own terms, not only in relation to its critical safeguards provision (Article 16) but now also in relation to its objectives (Article 1).

Given the huge problems with the Irish Sea border that have emerged since 2021, as set out in Parts 1 and 2, it is not appropriate to dismiss Mutual Enforcement as 'magical thinking' because the EU decided that it preferred the Irish Sea border in 2019. There is now an urgent imperative for the UK Government, to:

i) revisit the Windsor Framework because of its obligations under the Belfast Agreement (see Section 3 of Part 1) and
ii) impress upon both EU member states and the EU the moral and legal imperative to revisit the Windsor Framework so as not to place it in jeopardy, on account of the fact that rather than fulfilling its objectives, it is undermining them.

The truth is that in a context where one has 28 western countries that share similar values, if there are two means of managing a border: one which involves disrespecting the territorial integrity of a sovereign state, instigating the disenfranchisement of nearly 2 million people in 300 areas of law, and violating one of the most famous treaties, the Belfast Good Friday Agreement, and then another which respects the territorial integrity of sovereign states, does not disenfranchise anyone and does not violate the Belfast Good Friday Agreement, there should be no debate about which solution to adopt. While the Irish Sea Border violates the territorial integrity of the UK, disenfranchises nearly 2 million people in 300 areas of law and violates the Belfast Good Friday Agreement, Mutual Enforcement provides a way of managing the border that respects the territorial integrity of the UK, does not disenfranchise anyone, and upholds the Belfast Good Friday Agreement. We would argue strongly that the review should embrace this strategy.

The EU (Withdrawal Arrangements) Bill

One vehicle for introducing Mutual Enforcement would be through the TUV's EU (Withdrawal Arrangements) Bill.

Article 13(8) of the Windsor Framework is clear that the Framework can be amended or replaced. The effect of the Bill is to:

- **Remove Northern Ireland from the EU Single Market**
- **Replace the Protocol with a new Annex to the UK-EU Trade and Cooperation Agreement, which**

- **Implements a soft, invisible, customs border between Northern Ireland and the Republic of Ireland** without the need for checks or infrastructure at the frontier, thereby eliminating the need for an Irish Sea border
- **Respects the integrity of the EU Single Market** (which is the EU's overriding concern)

The UK-EU/Republic trade and border issues can be addressed, by employing Mutual Enforcement – i.e.

- **Conducting checks away from the border** on products crossing from Northern Ireland into the Republic/Single Market, and *vice versa*
- The UK and the EU **sharing customs data** on all goods crossing the border
- **Applying technology already deployed on low friction borders**, such as Norway-EU, Switzerland-EU, and US-Canada, to provide maximum mutual confidence and transparency. Checks on compliance would be done at exporting warehouses, factories and farms, away from the border.

The EU (Withdrawal Arrangements) Bill achieves the above, providing the detailed mechanics for the invisible border processes through statutory instruments.

On the island of Ireland, there is already a north-south currency border, a migration border, a VAT and excise tax border, and a security border, without any checks or infrastructure at the border. Moreover, the Republic applies immigration checks along the border on people moving from Northern Ireland into the Republic. As RTE reports:

'Immigration checks are regularly carried out on the border to detect breaches of immigration legislation and to detect abuses of the Common Travel Area. They are led by the Garda National Immigration Bureau (GNIB), assisted by roads policing units. Checks are also conducted in Dundalk on the Belfast to Dublin train line, as it is the first entry point to the State from Northern Ireland. Gardaí said that checks can be spontaneous or pre-planned.'[67]

Mutual Enforcement would build on the processes already in place, avoiding any return to the "hard" security border of the 1970s and '80s that existed to impede cross-border terrorism, rather than impede trade.

Importantly, products coming into Northern Ireland from the rest of the UK would no longer be subject to checks and compliance.

The UK must be prepared to implement one half of Mutual Enforcement unilaterally, applying EU checks for north-south trade, and guaranteeing the EU's border. This would remove any legal possibility of customs or regulatory leakage for the Single Market. For south-north trade, the UK would apply its own invisible behind-the-border checks to protect the internal market.

At the same time as enacting the Bill, the UK would offer the EU a long-term solution – an Annex to the Trade and Cooperation Agreement. If the EU were to agree to apply its half of Mutual Enforcement, the behind-the-border checks would be less weighty for the UK. However, the UK cannot wait for such an outcome. It must act now.

[67] https://www.rte.ie/news/ireland/2024/0526/1451302-border-immigration/

In talking to the EU about this it will be imperative to: i] remind them of how the entire Windsor Framework was conceived as a means to the end of preserving the Belfast Good Friday Agreement, which they regarded as a non-negotiable, see Article 1 and ii] to demonstrate how the actual operation of the Windsor Framework is destroying the Belfast Good Friday Agreement.

Unlike the Windsor Framework, Mutual Enforcement would provide a border solution that: i) while avoiding a hard border would continue to recognise the current position of the border between NI and ROI, in line with the Belfast Agreement in the absence of a border poll, ii) would not effect a constitutional change in Northern Ireland and thus not invoke the need for the consent protection in the Belfast Agreement, iii) would not necessitate a decision requiring the violation of cross community consent in the Belfast Agreement and iv) would not violate the democracy protection in the Belfast Agreement. In other words, while the operation of the Windsor Framework has presented an existential threat to the Belfast Agreement, Mutual Enforcement is entirely consistent with it.

At the beginning of the week that saw the first debate on the EU Withdrawal Arrangements Bill, Sir Jonathan Faull, Prof Joseph Weiller and Prof Daniel Sarmiento issued this statement: *"On Friday of this week, the House of Commons will be debating a Bill which attempts to address some of the difficulties resulting from the Brexit divorce agreements between the EU and the UK, which might be of interest to readers. In 2019, we proposed a solution which would have obviated any need for these complicated and divisive legal manoeuvres. The UK and the EU could have respected each other's positions and saved everyone a great deal of time and effort. The Financial Times characterised the proposal as a 'win-win solution'. Regrettably, it was not followed."*

The current arrangements are profoundly unjust and constitute a greater threat to peace and stability in Northern Ireland than anything witnessed in the last thirty years.

Conclusion

The above represents a win-win solution.

In the first instance, Northern Ireland will cease to be subject to the humiliation of disenfranchisement in 300 areas of law in colonial terms. Everyone's citizenship would be restored.

In the second instance, instead of the greater part of the Northern Ireland economy being troubled by the border, that which trades with GB, only the smaller part of the economy would be affected, that trading with ROI.

In the third instance, everyone, regardless of whether focused primarily on trading with GB or ROI, will benefit from the supply chain economies of scale arising from being part of the UK economy, bringing a general downward pressure on price.

In the fourth instance, those impacted by the border will find its impact negligible under Mutual Enforcement compared with the destructive impact of the hard Irish Sea border.

In the fifth instance, while the demands of the border will be less than the Irish Sea border in the sense that the volume of trade needing to negotiate the border will be significantly less, one could still use all the monies currently set aside for running the trader support service, mutual assistance scheme and digital support services (the combined cost of which is now approach £1 billion) to make Mutual Enforcement work well and so there need not be any additional cost, even as there will be very substantial additional benefits.[68]

[68] https://questions-statements.parliament.uk/written-questions/detail/2025-03-11/37523/

In going forward the following points should be remembered:

First, it must be an immovable red line in UK negotiations with any country, or group of countries like the EU, that the integrity of UK citizenship is never a tradeable commodity that can be made a means to an end, to do a deal.

Second, in engaging with the EU, one would expect that they will again assert their complete commitment to the Irish Sea Border and object to any changes. In responding to this it is vital to understand that our purpose is not to deny that there might be aspects of the Irish Sea Border they prefer. The point is simply that in a context where there are two ways of protecting the integrity of a single market, it is inappropriate to insist on one over the other for the benefit of potential increases in efficiency when the price of doing so is disrespecting the territorial integrity of a sovereign state and disenfranchising 1.9 million people, when an alternative means exists that crosses neither of these red lines. This imperative is greatly compounded in a context where their way also involves: i) undermining and destroying the Belfast Agreement which the Windsor Framework was designed to protect and ii) when the trade volumes we are talking about are in any event very small. Some might say, the UK cannot revisit this with the EU because the UK Government wants to build a positive relationship with the EU, and this might cause tensions. The problems with this argument are twofold. In the first instance, we do not help the EU by sheltering them from the real impact of the Windsor Framework on the Belfast Agreement, nor do we help their reputation as a champion of democracy, by seeking to conceal the problems and allowing them to become more deeply associated with an initiative that is likely to damage their brand.[69]

Although in 2019 the EU decided that it would rather pursue the Irish Sea border than Mutual Enforcement, this does not prevent a future change of course. The evidence set out by this submission demonstrates that the functioning of the Windsor Framework, as a matter of practice, has been very damaging, particularly in relation to the Belfast Agreement. Given that the legal objectives of the Windsor Framework are expressed in terms of upholding the Belfast Agreement, see Article 1, it is now clear that the Windsor Framework is failing in its own terms in this regard and in relation to the Article 16 safeguards. In this context both the EU and the UK must stand back from the Windsor Framework and seek an alternative solution. 2025 is not 2019. Mutual Enforcement must be revisited, and we would hope that in doing so in the context of a full appreciation of the costs of the current arrangements, including to the EU brand, that both parties would agree that considered in the round, it is now the most sensible way forward for both sides. However, in approaching negotiations the point must be understood from the outset that although the ideal is 'mutual' enforcement, this must not be allowed to afford the EU the opportunity to think that it can simply bat the issue away by refusing to co-operate. The truth is that there is scope, and the EU (Withdrawal Arrangements) Bill makes provision for this, to unilaterally introduce the approach of applying the standards of internal market A to all businesses in internal market B to the extent that they are producing goods for internal market A, and to make provision for the payment of all relevant duties before goods leave the factory. While this would not force the EU's hand, it would make it much more difficult for the EU not to co-operate. We would be happy to provide further advise from people with expertise in negotiating with the relevant EU lawyers on matters such as these.

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[69] https://x.com/CatharineHoey/status/1906825882162917598