

Protocol on Ireland/Northern Ireland Sub-Committee

Corrected oral evidence: The Windsor Framework

Wednesday 29 March 2023

10.45 am

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Members present: Lord Jay of Ewelme (The Chair); Lord Dodds of Duncairn; Lord Empey; Lord Godson; Lord Hain; Baroness O’Loan; Baroness Ritchie of Downpatrick; Lord Thomas of Gresford.

Evidence Session No. 2

Heard in Public

Questions 11 – 24

Witnesses

[I](#): Lord Bew; Lord Murphy of Torfaen.

Examination of witnesses

Lord Bew and Lord Murphy of Torfaen.

Q11 The Chair: Welcome to those who are watching and listening. We are today holding the second evidence session of the committee’s inquiry into the Windsor Framework, following the UK-EU agreement in principle announced on 27 February and the UK-EU Joint Committee meeting last Friday formally to adopt the Windsor Framework. The committee will be taking oral and written evidence over the coming weeks in order to inform its detailed report on the framework, to be published ahead of the Summer Recess.

We are joined today by two expert Members of the House, Lord Bew and Lord Murphy, who are well known to the committee; we are very grateful indeed to have them before us today and thank them very much for being here. You are both welcome and we look forward very much to your evidence.

Although we all know who you are, we would be grateful if you could introduce yourselves briefly the first time you speak, so that everybody else will also know who you are; that would be really helpful.

Today’s meeting is being broadcast and a transcript will be taken for subsequent publication that will be sent to you to check for accuracy. I

refer you to the list of Members' interests published on the committee's website.

So that is the introduction. Perhaps I could ask the first general question before we go on to more detailed aspects of the Windsor Framework and the Stormont brake. What is your overall assessment of the Windsor Framework and the extent to which it resolves the problems that have arisen over the protocol? Could you also say how significant you consider the differences between the UK and the EU publications that accompanied the Windsor Framework, and whether there are any factual inconsistencies in the explanations they give of what has been agreed? Perhaps I might start with Lord Murphy.

Lord Murphy of Torfaen: Lord Chairman, it is very good to be with you again, on a happier occasion, I suppose, than before, because there has been a resolution of this. I should introduce myself: I am Paul Murphy. I was a Labour Member of Parliament for about 30 years and a former Secretary of State for Wales and Northern Ireland. I am now, obviously, a Member of the House of Lords.

My overall assessment of the Windsor Framework, which of course will be dealt with in this House later today, is that we in the Labour Party will support it—I will support it. It is not perfect—far from it—but it does provide a compromise for people to work on. I always found it quite unusual when reading the Windsor Framework document, the Command Paper, to see that it heartily condemns the protocol for page after page—a protocol, incidentally, written by the same Government who are now denouncing it and wanting to change it. Perhaps that is another story for the historians. Nevertheless, it is a backcloth that we should understand: the protocol was made by a Conservative Prime Minister.

This Conservative Prime Minister has, I believe, done his best in trying to resolve a very tricky situation, and the majority in the House of Commons, which was absolutely enormous, should be respected in this House. I am not sure whether we will be voting on it later, but I suspect that, if we do, there will be a similarly large majority—that is my guess—in its favour. That is not necessarily in favour of every single detail in the document; we will come on to some of these details later. I am no expert, incidentally, on the framework, but I have some reflections on how it might work or not work so far as Northern Ireland is concerned.

At the end of the day, this framework was developed for two reasons. The first is to unlock all the problems that Northern Ireland has faced since the protocol was introduced with regard to goods entering Northern Ireland from Britain, and all the bureaucracy and difficulties that people in Northern Ireland have faced. I think it does a pretty good job on that, with the green lane and the red lane and so on.

The second, equally if not more important aspect, was to try to resolve the democratic deficit that was the basis of, in particular, the unionist community's concern about the document. I think it handles that reasonably well. We will come on later to the Stormont brake. I think

there are dangers in it, in that the framework is obviously designed partly to ensure that unionists, in particular the DUP, will go back into government, because they have concerns over this issue. Clearly, it has been designed for that purpose.

However, as is always the case in Northern Ireland, if you design something too much for one side, you possibly design it not enough for another. That is the great balancing act that we have to make sure is addressed with this proposal. I hope, obviously, bearing in mind the security situation at the moment and the upcoming anniversary of the Good Friday agreement, that things can be resolved as quickly as possible—but only time will tell on that. That is my general view.

The Chair: Thank you very much.

Lord Bew: First of all, I am Paul Bew, a Cross-Bench Peer and, in a parallel life, chairman of the House of Lords Appointments Commission.

I agree in substance with Paul's remarks and will add one very obvious thing: it is on the upside of legitimate expectation. The question is: what is legitimate expectation? It may be that there are people in Northern Ireland whose expectations were not legitimate, entirely. But it is an indisputable fact that it is on the upside. Even now, after a lot of DUP criticism, nobody says "betrayal"; what they say is that it is "oversold". That in itself is so significant. I will just record that, because it is worth making that point.

One of the key points that you raised, Lord Chair, was the difference between what we and other people, including the EU, have said and what it all means. If we are going to evaluate that, I think we have to go back to our own position in the wake of the December 2017 joint EU-UK report, in which there was a massive intellectual collapse on the UK side, because the Prime Minister had lost an election and, essentially, was desperate for any deal. As the lead Irish official subsequently said, "We were given ownership of the Good Friday agreement", and with it the island economy.

That was not a concept in 1998, by the way. We would never have had a deal if the Irish officials, let alone the British officials, had said anything other than, "This is about a co-operation strategy between two economies". There has not been, outside agri-food and possibly electricity, substantial growth in the island economy in the 25 years since. But the island economy is an example of a piece of nationalist theology and Irish Government theology that is then in all subsequent agreements, including the Johnson agreement.

Paul talked about the Command Paper and its indigestion with this. It is actually a reasonable intellectual indigestion, because of the collapse in the British negotiating position and the acceptance of concepts such as that, which unbalances things. As I say, as the lead Irish official said, Ireland was given sole ownership of the Good Friday agreement but the UK has the responsibility and has to pay the money.

Why am I saying this? Because, in the aftermath of that, beginning with David Davis and the joint agreement, the UK was issuing statements saying, "We didn't do this; we didn't quite agree that; it's not an international agreement". Barnier is quite correct to say in his memoir that, within days of Theresa May signing the international agreement, the UK was insisting that it was not an international agreement, and so on: "There's a great deal of flexibility on this".

In the end, the two reports—the Theresa May withdrawal agreement and the Boris Johnson withdrawal agreement—are still totally infected with these concepts, dominated by what the French call "the problematic": the system of concepts that adds questions and answers.

I am saying that it is rather different this time. Looking at EU comments after the match, we see that there is also an element of making the best of a bad job, such as we did ourselves in that period: "We did not quite sign up for that", "It means something slightly different", and so on. In the end, the horse had gone; we had signed on the dotted line. This time the horse has gone too.

There is a joint agreement. It is quite clear what it states and it is quite clear what the context is. The context has changed. There is no longer a desire on the EU side to give Britain a punishment beating, which is certainly what happened in 2017, for fairly obvious reasons. It begins by acknowledging the role of the UK in European affairs and in the defence of Europe, et cetera. There is a totally different tone. That is why the EU sought this agreement. So we are operating in a different context.

Up front is the fact that Northern Ireland is part of the UK internal market, which is referred to twice, and the need to protect that. It is actually glancingly referred to in the original withdrawal agreement.

What I am trying to say is that the context in which this was negotiated on the EU side was totally different from the context before. Therefore, we have a joint agreement. I have seen statements from European figures, talking about the supremacy of European law—we will come back to the European law issue—and they are much in the same category as the sorts of things that we said in the aftermath of our negotiation on the uncomfortable elements. The only thing that matters is the joint agreement: there is a text, and it is very clear in my mind what it means.

I add just one thing on why I think it is upside. One of the great pieces of work this committee did was on medicines. There was a revelation in the committee, only a few weeks ago, that the situation was not as benign as we had been led to believe and that there were significant gaps, and so on. All members of your committee were alarmed at what they discovered. Yet, within a few weeks, what has happened? The medicines question has been totally resolved—those issues that were quite rightly discussed somewhat nervously here. That is an indication of what I mean by the success of the negotiations.

People raised questions about animal feeds and so on. In this newer climate, where the EU is not out to give Britain a punishment beating, it is inconceivable that we would resolve medicines and then fail to deal with questions of animal pharmacy over the next few years by agreement. We are in a radically different context.

The Chair: Thank you very much indeed. That is a very good start to our discussions. I am very grateful, and I will pass on to Baroness O'Loan.

Q12 **Baroness O'Loan:** Perhaps I could start with Lord Murphy, since Lord Bew has just been speaking. What impact do you believe the Windsor Framework will have on the political situation in Northern Ireland. In particular, how do you assess the initial response to the framework from unionists, nationalists and Others—with a capital "O"?

Lord Murphy of Torfaen: That is an easy one. The answer is that I do not know. None of us will know until the weeks go by, and perhaps until the anniversary of the agreement.

We all know what the situation is publicly. Lord Dodds is here; he will speak for himself and for the DUP and its reaction. It is still not satisfied with what the framework says. Other parties take different views. As far as I know, the Ulster Unionist Party is satisfied with it as a compromise, as are the other parties, the SDLP, the Alliance and Sinn Féin. All of them, I suspect, have some disagreements with it, but that is the nature of compromise. You cannot have everything you want. If it can unlock the door to restoration, it will have achieved great things.

As I said earlier, we will have to wait and see on that. But the practicalities of the Windsor Framework, whether it is the medicines or the vets or the green lanes or the red lanes and all those things, must prove to be a useful basis on which to move.

It has always struck me as strange that all the things which they have now resolved in this framework should have been resolved when they did the protocol in the first place. Could they not have foreseen these things? It strikes me as so obvious. Medicines is a classic example, and the fact that this committee has highlighted that issue over the last number of weeks proves that. Anyway, that is in the past. We are where we are at the moment and I think it is a good basis.

Where I think that more work could and should be done is on proper negotiations with the parties themselves. I may have said this to the committee last time. There were parallel negotiations—negotiations between London and Brussels and negotiations between the Government and the political parties in Northern Ireland. It is quite clear that the compromise of the Windsor Framework is reasonably successful so far as concerns the negotiations the Government had with the EU. I had a look at the EU document and have to confess I did find it somewhat difficult to read; the Command Paper is much easier. I am an absolutely convinced remainer, but I do not miss the English of European Union documents; it is hard. So the negotiations have been successful on that side.

It is the negotiations on the other side that still need a lot more attention: that is to say, talking to all the parties, both in multiparty talks and in individual talks between the Government and individual parties on how to try to resolve this so that the institutions can be restored. I do not think enough has been done on that. I am not convinced that enough was done towards the tail end of the negotiations between the Government and the European Union.

I know there are problems, and that you have to keep things secret and all the rest of it. But, ultimately, unless you involve the parties in Northern Ireland that will eventually have to work this agreement in the Assembly, it will come to nothing. I am troubled by that, I must say. I hope the Government and the Secretary of State will take that on board. I know Easter is coming up and all the other things, but I hope that there will be a lot more intensive negotiations than there have been, with all the parties in Northern Ireland.

Lord Bew: I acknowledge that Lord Murphy has been right for longer than I have been about the need to engage Northern Ireland parties, going back to the debate in our House in 2018 and before that. He has been consistently correct on that point. That having been said, we should be clear that the DUP did get a lot of access—so much so that some of the other parties could reasonably have complained. But as they are the nub of the matter, one can understand why the Government did it. So I do think it really got a lot of access in discussion of these issues. At the moment, we still do not have a final position, and there are endless comments about this.

I feel that the debate in Northern Ireland is poor, and lagging behind the realities and complexities of the document. That is the first thing. I do not read things that I regard as definitive.

The DUP has a very particular problem. For the TUV, it is clear-cut; over 25 years, it has opposed the Good Friday agreement, which it said was creating an island economy which would mean political unity. The DUP did that too for a while. The TUV says it about this too. It is a clear-cut line. You might disagree and say that those are not the facts of the case: you can look at David Trimble's last document, written only a few months before he died in his foreword to Dr Graham Gudgin's text for Policy Exchange, which argued that there is no island economy. None the less, it is a logical and unchanged argument of the TUV that we will not have European law; an argument originally directed against the Good Friday agreement and now directed against the protocol: that it is all about creating an island economy and a political economy on top of that, and so on. Every third day there is an article from the TUV saying this.

The DUP's position is different. In the end, it went for the St Andrews agreement. Here is the first major problem. When I first came to this House, I listened to the legislation for the St Andrews agreement—I am looking at Lord Hain, who played a major role in it—as it went through this House. So many large chunks of it were just the Good Friday agreement again. Everybody knows that. The legislation was going

through, but just to sit and listen to it was interesting. Everybody knows that it is reasonable to say that, at most, the St Andrews agreement is 95% the Good Friday agreement, with 5% changed—something of that order.

If you have said that you are satisfied with these relatively modest changes as against the Good Friday agreement—one of which is creating great problems in the Northern Ireland electoral system for First Minister—then it is much harder now to say, “The Windsor Framework is not a change against the protocol. A lot of the protocol remains”, which is perfectly true. It is a perfectly good argument for the TUV, which has been against the whole thing for 25 years. But if you have already said that the St Andrews agreement is a major change, even though it is a 5% differential, then it is a very hard argument that this is not a change of at least equal significance. I have not actually heard any explanation on that point.

We are stuck, and the commentary generally is at a lower level. If you looked at the coverage in the Northern Irish media leading up to the report—the technological advances of red and green lanes were fairly well leaked—you would have seen that there was no expectation of the many other things in the agreement on VAT, tax, medicines and, above all, the brake. None of these things was anticipated by the people running the debate. Their immediate instinct—this being Northern Ireland—is to say, “Of course I knew that this was coming.” They did not know it was coming at all. They are floundering. I do not see the textured detail in dealing with this problem.

This is a difficult context. Northern Ireland is not just unionism; it is nationalism, and nationalism is inclined to believe the commitments given by the UK Government, which were never rejected by Boris Johnson. I recall his article in the *Belfast Telegraph* on the 25th anniversary of Blair’s great Balmoral speech, deliberately designed as an echo and a homage to that. The article told the unionist community, “We are determined that the Good Friday agreement is implemented in a fair way in your interests”, and told the nationalist community that there will not be a hard border, and that “We understand your views on this matter”.

Nobody was ever promised the end of European law or of the consequences of this special access to the European Union; at no point were they ever promised that. None the less, the debate is now poisonous and sectarian because, brutally, as we know, many nationalists think that this is not really about the agreement but about not going in under a nationalist—I should not even use the word “under” because it is a co-premiership, shared with Sinn Féin.

Nationalists in Northern Ireland often have low assumptions about unionist morality, which are frequently wrong and probably wrong this time, for large numbers of unionists. None the less, that is how they see it and it is poisonous. This is a debate not just about the Windsor Framework but about these political consequences and stability in Northern Ireland generally.

Q13 Lord Hain: I want to explore a bit more the implications of the framework and the UK's and EU's joint commitment to protect the Good Friday agreement on the different strands, particularly strand 2. If you look at the detail, how do the UK Government assess the test criteria which provides for this minority veto by 30 MLAs across two parties? How does that sit alongside the cross-party co-operation principles of the Good Friday agreement? Would it put a strain on strand 2 specifically, in maintaining that co-operation, particularly if that minority veto was to take Northern Ireland out of compliance with the single market?

Lord Bew: Those are very good questions. There is an SDLP and Alliance Party objection, stated right from the start by Colum Eastwood and Stephen Farry. It is a serious objection to the brake. On the DUP side, it has come to be called the "Stormont fake".

These things are worth unpacking. The first and more general point is this. Are we really now in a place where the UK will be radically de-aligning in significant ways from the European Union and vice versa? Is there a commitment on businesses who say, "I really want the right to make in my factory unsafe sofas that will go on fire"? This is not realistic in the regulatory environments that work within in the UK.

In a recent case, the EU said no more arsenic in baby food—strangely enough, I did not know there was arsenic in baby food. Did we, in favour of our heroic Brexiteer vision, say that we will have arsenic in our baby food? No. Immediately, all the British manufacturers said that that is perfectly good and that we will not have arsenic in our baby food either. The general problem is how serious this is anyway.

The brake is designed to deal with a unionist fear—which is, as I have just said, given the way things are evolving and given the position of the Labour Party on this, and now larger sections of the Conservative Party, less likely to happen. Nevertheless, there is a reasonable fear that Northern Ireland could find itself radically de-aligning. The brake is there to deal with what was, until recently, a reasonable fear.

I absolutely accept that, from a certain nationalist point of view, you can see its operation introducing a tension in north-south economic co-operation, which is what you are getting at. I totally accept that. I am a very strong believer in north-south co-operation in general.

In parenthesis, one of my strong regrets about the Windsor Framework is that the north-south bodies on food safety and animal health should always have been employed to deal with the veterinary issues arising from the removal of Pirbright from the UK system. There is no need for the language in the protocol, or in some of the EU documents, dealing with veterinary questions, which many people find offensive. We should simply have said that we already have north-south arrangements to deal with veterinary issues. We have Dr Paisley's famous acknowledgement, "My farmers are British but my cattle are Irish". We should never have gone there, and that should have been formally rejected.

In the real world, veterinary questions arising from the disavowal of Pirbright within the UK system will be dealt with on a north-south basis. The concerns that have been expressed are real enough, but the overriding political purpose is to deal with unionist alienation on this issue. It is legitimised by the Good Friday agreement. Paragraph 5 of strand 1 of that international agreement says that the UK Government have a sovereign responsibility not to have the alienation of either community on a major issue.

For example, only a few months ago we in this House legislated on the Irish language because that was an issue of importance for the nationalist community. Equally, all these things—this agreement, the Bill that came forward and so on—were part of a labour of work by the UK Government, who said that this is a double responsibility and they could not accept the large-scale alienation where every unionist public representative was against the protocol. They were obliged to do this by an international agreement. This step is taken in that light.

I completely accept the risk and the danger—although, in the way that the economies are evolving, there may be little enough occasion for its use. That is rather more likely than not at this moment than what we might have said two years ago. None the less, I accept that there is a risk and a problem. There are Irish Government concerns about this and SDLP concerns too.

Lord Hain: Sorry to interrupt, but do you think it is more a question of working through the detail and negotiating a lot of that detail, including the relationship with Stormont, the democratic scrutiny committee and so on? Some of that detail is left hanging, is it not?

Lord Bew: It is, but you are never going to break away from the fact that the UK Government have negotiated the brake primarily with a view to reducing unionist alienation. That is a political fact, and no amount of subtle interpretation will change that.

To go back to my earlier point, the EU has signed on the dotted line. There are some signs of buyer's remorse in the EU—in fact, there is no question of that in some parts of the EU—as we had buyer's remorse on the previous agreements, and a lot of good it did us. I refer back here to David Davis. I am afraid it is signed. That is there; it is done. Buyer's remorse is not going to be the critical issue.

The great weakness in the unionist case is that it says, "At the end of this process we have to trust the UK Government". If you are in Sinn Féin then it is a perfectly logical argument to say, "I believe in ourselves alone", but I am afraid if you are a unionist then you believe in the union. You believe you are part of this wider polity—that is what you want. Sometimes the tides in that wider polity will not suit you. That has been true ever since 1800. Sometimes stuff is going to happen—Governments are going to be elected and will depend on nationalist votes, or whatever—that does not suit you from a unionist point of view. That is the price of being part of the wider polity.

I find astounding the assumption that unionists know that the UK Government, who have an indisputable role once the Stormont brake is triggered, will naturally, automatically and inevitably betray us because that is what they always do. That is just not a serious argument. There is no point in being in the union if you think that the UK Government will automatically betray you.

Imagine a context in which the DUP, if in government, could quite legitimately and easily walk out again. Suppose we have a moment where an issue of sufficient seriousness has provoked a cross-party vote, which the DUP alone would not have the votes to win. Do the DUP want to walk out of government and collapse it—which it would be able to do with far more legitimacy than the current stance?

We all forget what Lord Frost did, underappreciated in the House of Lords: he demonstrated, without any backing from an international agreement, unilateral exemptions so that the UK Government have local state power and can decide X or Y. By the way, he stabilised Northern Ireland with some of the measures on which he straightforwardly intervened and said, "These will no longer be subject to checks and so on". He demonstrated that the UK Government could do that while the EU had some legal case somewhere up in the sky. He demonstrated that the possession of local state power is extremely important.

Do you actually think that, underpinned by an international agreement in which the European Union has accepted the Stormont brake, the UK Government are suddenly going to quail if they have good political reasons, such as the stability of the institutions? They are not. We know they were prepared to take action without the underpinning of an international agreement. This is an international agreement, so the UK Government are not going to quail.

Lord Hain: I would like to bring in Lord Murphy, please.

Lord Murphy of Torfaen: I will do my best. The problem goes back to the fact that, during the Brexit debate, not enough thought was given to Northern Ireland. That is the root of this problem. On the one hand, the international agreement agreed between Ireland and the United Kingdom that resulted in the Good Friday agreement and, on the other, leaving the EU are incompatible things that needed to be sorted out in much more detail than they were. That is the root of this.

On the point about strand 2, the north-south arrangements, you always have to remember that Ireland and the United Kingdom are the internationally recognised co-guarantors of the Good Friday agreement. So anything that happens with regard to the institutions must at some point involve the Irish Government—but not in strand 1, which is specifically an issue for the British Government. But one forgets that, when the institutions are collapsed, they all collapse. It is not just the Assembly and the Executive, although they are the most obviously visible, but the north-south bodies and strand 3 on relations between the United Kingdom and Ireland—which, frankly, until the last few weeks

have been catastrophically low. One good thing about this agreement, incidentally, is that it has improved relations between the two Governments, which is great, particularly in the run-up to the anniversary.

Sometimes people forget a bit about what people in Northern Ireland think, and that this is an argument only for those of us who are politicians. It is not. I am sure there is huge frustration among the population of Northern Ireland, whether they be unionist or nationalist or neither, about what has happened. Opinion polls show—although obviously you have to take opinion polls carefully—that most people in Northern Ireland still believe that the Good Friday agreement is the way ahead. A lot believe that there should be some sort of change to it, to reflect the fact that it is 25 years later, but such change has to be done by agreement.

Ultimately, if you do not want any rules in Northern Ireland that are different from Britain, then you have to come out of the single market. If you are in the single market then you are going to have some different rules. The Government argues that, I think, 97% of rules do not apply in Northern Ireland and only a very small percentage do. The argument of the DUP and others that “We don’t want a foreign country or institution governing us in Northern Ireland unless we have a say in it” is virtually impossible as long as you are in the single European market. You therefore have to come up with ideas for giving the Assembly and the Executive more powers and rights in order to deal with that.

Lord Hain’s question was whether giving a veto to 30 Members of the Assembly from two parties will destabilise the whole thing. Technically, of course, it could be other parties that exercise the veto. It seems highly unlikely that the Alliance, the SDLP or Sinn Féin would do that. As with any petition of concern, the right is there for any two parties with 30 MLAs to disagree with what is happening. But the realpolitik is that it is much more likely to come from the unionist side.

So we are back to the old discussions again, and the point you made earlier on: it is a framework, that is the name of it, that you put to government. None of this can happen, incidentally, unless the Assembly is meeting; it is all meaningless unless the Assembly actually meets. Then, when it meets, the democratic scrutiny committee that has been set up—or whatever methods the Assembly or the Executive want to put into operation—can be utilised to try to resolve the issues that are currently problematic.

Of course, with the practical issues—the medicines, the pets, the vets, the green lanes, the red lanes and all the rest of it—that is a way forward and it does help a great deal. To the ordinary person in Northern Ireland, that is what they were affected by so long as the protocol was in operation.

The argument that I come back to all the time is: get the Assembly up and running and deal with these matters inside it, because they are important issues.

The Chair: Thank you very much. Now to Baroness Ritchie.

Q14 **Baroness Ritchie of Downpatrick:** Gentlemen, you are both very welcome, as colleagues within the House.

We have already partly addressed the Stormont brake and I suppose we are dealing very much with an academic debate, because we do not have the institutions of the Good Friday agreement and the Northern Ireland Act. What is your assessment of the operation of the Stormont brake and of the proposed conditions for its use? To what extent do you think it will address the democratic deficit that many identified under the protocol? What practical, political and legal factors need to be borne in mind in its use and operation, bearing in mind that MLAs will have to specify in some detail, with evidence and argument, their opposition to a particular EU directive, and then there will have to be quite detailed investigation? I say that as somebody who was a signatory once upon a time maybe to a couple of petitions of concern in the Northern Ireland Assembly. I will come to Lord Bew first.

Lord Bew: I absolutely take your point. But it is clear what it is: it is meant to be a safety valve. As I have argued, it is possible that we are on a path of development with the European Union and that it may never be used. But I do not see how, given the concerns that the unionist community has about radical alignment on a Northern Ireland basis, we could possibly have hoped to get Stormont going again without this particular mechanism. I think it is a genuine surprise for the Government—and, by the way, not unreasonably a genuine surprise—that the DUP itself and so many people are apparently sure about it.

I have a bigger problem. I think in general, as I have said before, that the level of the discussion of the agreement in Northern Ireland is poor. The local media discussion is poor and any educational process, to put it mildly, is not there at all. You have just got the rhythm of people's emotions, essentially.

It cannot be flippantly introduced, as you rightly said. Then again, to be fair to the unionists, you have to have two parties, and so you would have to have a slice of the Ulster Unionist Party as well to do this. All of this then sets at least some bar to a flippant and erratic use of this instrument. But really, it does have to be there. A lot of thought went into it, and a lot of negotiating effort.

The other reality is that, to be honest, there were inevitably elements of bias in this. It does not really matter; it is the same problem that we had. We signed up for a whole variety of things. The way in which we talked about a hard border was too vague, et cetera. But we signed up for a variety of things in the earlier phase of this and then we claimed "not quite" and so on. There is an international document now, and this is what everybody will have to live by.

I would love to have the problem that Stormont was running and this thing was happening. We are nowhere near even having that problem. That is my simple answer to you. Where Paul Murphy has always been right is in stressing the importance of the institutions being down during this negotiation. As I said, this is something I was slow to see myself. He has always been right about this. It is a matter of such essential importance.

Despite the objections of the SDLP and Colum Eastwood, none the less, in the end, he swallowed them and voted for the framework. That was the dignified thing to do and the right thing to do in this context.

Lord Murphy of Torfaen: The first thing to say is, whatever it is, the Stormont brake is not simple. I suspect that trying to explain it to the man or woman in the street in Belfast is going to be a pretty hard thing. Also, it must be regarded as the nuclear option, because the threshold is pretty high: 30 Members, a third of the Assembly. As Paul has just said, the DUP and the TUV on their own could not make that third at the moment. Of course, that might change with elections, but it is not a low threshold.

So what is the option? The option is that the Assembly meets, the Executive meet, and if there are laws that are so important that people think they are affecting Northern Ireland adversely, there should be a mechanism, which there is with the committee that is likely to be set up by this, within the Assembly, to discuss them in a lot more detail. Obviously there are lots of statutory instruments from Europe that are not trivial but which I would not call hugely important, and they would not have to be discussed because they are not that important—but undoubtedly there are important ones. Then the mechanism should be to get around the table and talk. Ultimately, if that mechanism has to be used, it could be that everybody around the table agrees that the law should not apply in Northern Ireland—and even better, because you do not need the 30 MLAs then.

None of that is possible, of course, unless the Assembly is meeting, and that is my appeal to the DUP. I acknowledge the views that it has and understand the problems that it has, even with this protocol, but they can be resolved only if we deal with the greatest democratic deficit of the lot, which is the absence of government in Northern Ireland. There is no government in Northern Ireland. Scotland and Wales are devolved and we have our Governments.

Ultimately, the issues that the Assembly is charged with dealing with—the health service, the education service and everything else that is so important to people's quality of life—matter, but these are important too and I do not underestimate them. My argument has always been that you can deal with them in parallel in the Assembly and the Executive. Of course, it was Sinn Féin that started this, not the DUP. Sinn Féin decided that it could not go into the Assembly. So we should bear that in mind as well. But ultimately these things, with good will and determination on the part of politicians in Northern Ireland, can be resolved.

Q15 Lord Godson: I thank both our distinguished panellists, along with everyone else here, for their contributions today. I am interested in their assessment of the Windsor Framework's proposals for enhanced engagement with key Northern Ireland stakeholders. Obviously there is a chunk of text in the Windsor Framework stating that every year Commission representatives will engage with Northern Ireland stakeholders on the Commission work programme for the following year. This will highlight relevant proposals of particular interest for Northern Ireland stakeholders, enabling timely engagement with them.

Lord Murphy of Torfaen: I think it does a good job in saying that there should be a lot more engagement with stakeholders. The Prime Minister has spent quite a bit of his time in recent weeks talking to businesses, trade unions, people from the voluntary sector and so on, who are important in all this. As I said earlier, we politicians occasionally think we live in a world of our own; we do not. Sometimes we forget that. We live in a world which sometimes we do not engage enough with. That is important. The framework highlights that too; it specifically mentions it.

Remember that, originally, in the Good Friday agreement, there was the establishment of a civic forum in Northern Ireland, which never seemed to take off in the early years. Apparently, the latest opinion polls show that there is a case for it. So people are conscious of civic society—by which I mean everyone who is not a politician taking part in how decisions should be made.

The other issue is the knowledge that people in Northern Ireland have of the European Union institutions. The knowledge there is probably greater than in most parts of the rest of the United Kingdom. Over the years, with the PEACE money, the objective 1-funded money, quite elaborate structures were set up in Northern Ireland to engage with the European Union and with the money that came from it. The distribution of European funds played its part in bringing people in both communities together. People in Northern Ireland are not unused to proper, structured ways of dealing with these issues.

As an aside, there is still the problem of sustainability for lots of groups and organisations in Northern Ireland that were funded by European funding where that funding has now gone or has not been replaced by the Government. Those are things that the Assembly and the Executive should be dealing with.

Lord Bew: Lord Murphy has mentioned polls twice. I understand what he is saying. I am just forcibly reminded of the Sunday before the Good Friday agreement, when we sat together in Hillsborough Castle. The polling evidence in front of us was much worse from the point of view of the Good Friday agreement than the recent polling, and this was about four or five days before the actual vote. That came to my mind when I saw some of the recent newspaper articles.

Everything Lord Murphy has raised is serious, but the key issue is that, if we have a First Minister and a deputy First Minister in operation, they will

sit on the joint committee. That is the key issue. There has been a long struggle around the issue of democratic deficit, in which this committee has played a major role with its report. When we talk about the brake and that outcome, we are trying to normalise the situation. The great danger with the protocol in its original format was that it was purely top down, essentially. Difficulties arose. Nobody now is a full implementer, which a number of the pro-EU parties were in Northern Ireland. In passing, the DUP is missing the opportunity to point out the follies of full implementation as a policy.

The most important thing is that the positions are joint opposites; it is a co-premiership, and the two people who hold that co-premiership will then be part of the joint committee's implementation and discussions. That is the most important thing.

This thing is not over. The former Attorney-General, Sir Geoffrey Cox, when supporting it in the Commons, quite rightly rooted it in some of his own concerns about the original May deal. The Windsor Framework will not be the end of this discussion.

A couple of weeks ago, I was speaking in the Northern Ireland Affairs Committee with an Irish official from that time, Tim O'Connor. He made a similar point, talking about the Good Friday agreement: implementation is negotiation. We have not ended the implementation process. I personally think that, in this better atmosphere, some problems that have proved difficult to solve in the past will be much more easily solved, but we have to realise that this is not over. Implementation will be negotiation, but this time, with the political leadership in Northern Ireland around the table.

Q16 Lord Thomas of Gresford: Would you agree that the First Minister and deputy First Minister ought to be able to appoint deputies to deal with the specific measure that is in front of the joint committee, as opposed to being there just as a token?

Lord Bew: Yes. I am assuming that there will be available to both those Ministers considerable specialist advice. There is a context in which, if this was working, you could have quite refined official advice, adviser advice and civil service advice. This is not an agreement with everything that, for example, Dr Andrew McCormick, who was the originator, did or said during this process. The red and green lanes originated at the apex of the Northern Ireland Civil Service, with McCormick and Sterling as the two key officials.

What I am saying is that we know that there are officials who are well up to this task. If a local politician wanders into a group of sophisticated European officials on their own, it is probably not entirely desirable. But there is a culture that would feed in, in a sensitive and sophisticated way. I really would be hopeful that this model could work.

Lord Murphy of Torfaen: I agree with that, and I very much agree with the idea of the First Minister and deputy First Minister being on the joint

committee. That brings both nationalist and unionist views in, all the time working together.

Over the years, there have been junior Ministers belonging to the Office of the First Minister and deputy First Minister. I suppose it is possible to have one or two junior Ministers—often these things must happen in twos in Northern Ireland—charged with the specific task of overseeing this deal on a committee other than the one that is recommending the framework. None of that can happen, of course, unless the institutions are functioning. That is the big issue.

Q17 Lord Dodds of Duncairn: I thank our two distinguished interviewees for coming along today and sharing their views with us. This has been very useful.

I will make an observation before I ask my question. Lord Bew referred to the quality of the debate being poor in Northern Ireland, and so on, and talked about the lack of substantive information from the Government on matters of detail. Surely one of the problems that has contributed to the issues that we currently have is the deliberate, wilful refusal of the Government to answer specific questions—the Parliamentary Questions that I and others have tabled, which the Government have point-blank refused to answer in terms. We have had respected journalists in Northern Ireland writing about this, delving into considerable detail in trying to get answers on specific issues, but they cannot get those answers and they feel that they have been misled.

The Government, not just through overselling but through their failure to be transparent and to go into detail, are surely contributing to the concerns that people have. I am sure you will agree that they should be more open in answering questions factually.

We will eventually get some of the information. We are coming on to a question about the 1,700 pages of EU law and the 3% issue. We still do not know the list of laws to which those refer, and the Government will not answer that question.

My specific question is about the red and green lanes, which you mentioned; you referred to it in answer to the previous question, Lord Bew. We have talked about EU laws. The reason we have these checks at all is the different regime in Northern Ireland under EU law. One of Rishi Sunak's claims was that all the DUP tests had been met. Jeffrey Donaldson said that one of those was there being no checks between Britain and Northern Ireland and between Northern Ireland and Britain, and yet it is clear that those checks remain. How do you square what the Prime Minister is saying on that matter with the facts?

How do you see these red and green lanes operating economically? We had the revelation yesterday from the EU Commissioner at the meeting of MEPs where he said that nothing would happen unless the border posts were built first. How do you see that working out? Do you see things not being implemented on the EU side until we have these posts up and running, which could take considerable time? Maybe those are details

that you are not in a position to answer on, Lord Bew and Lord Murphy, but I would be interested in your views.

Lord Bew: The nub of your question is the way that the Government are handling it. There is one aspect of oversight that I think is a genuine problem. It is simply the case that no one knows what the economic future of Northern Ireland is. I understand that large parts of the business community and the Prime Minister believe that this is the best of both worlds, but we should all say that no one knows for certain. I have written things saying that it might be quite good, but no one knows for certain what the economic future of Northern Ireland will be under these arrangements. It would be better to approach it in that calmer way. There are arguments that it would be good, but those arguments are within that framework. To say with absolute certainty that we know it will be El Dorado is a real oversell.

On the seven tests, I have a slightly different position. If we are talking about overstatements, a DUP Member of Parliament says that none of the seven tests has been met. Everyone knows that the second test is met because there is no diversion of trade according to our own statistics. That began as an issue because some Irish figures suggested there would be a diversion of trade. Regardless of anything the Government did here, on the second test, Article 16 exists should there be diversion and that would be a perfectly legitimate use of it.

It is not simply the case that the Government have from time to time oversold, but the argument against has also been oversold. Personally, my view is that the Prime Minister should have done more of what Tony Blair did in the aftermath of the Good Friday agreement. He came to Belfast, went to television studios and put himself before audiences. I have heard a private meeting with local journalists in which his mastery of the detail, as in the House of Commons on the debate, was well beyond theirs. It was well beyond that of the local journalists. The knowledge that he has acquired of the detail of this should be put to more use, just as Tony Blair was put to excellent use in those days. Do you remember all the many interventions and the frequent visits? I understand that Prime Ministers have other things to do and so on.

I also think the Government should reveal more from the files—they are massive—dealing with this negotiation. I do not think there is some awful dark secret or hole in the arguments. How do I know? I cannot not know, because I have not read the files. In the debate so far, there is not a realistic sense that the Government somehow are hiding detail or are not on top of the detail. If you realistically accept that mistakes have been made, it is equally obvious that egregious errors have been made on the other side.

The seven tests do not, for example, mention European law. There have been attempts to expand the seven tests from the DUP. Here is a problem. The people who negotiated this in Brussels thought that the original seven tests were what they were trying to meet—not the now expanded meanings that have been added in.

Lord Dodds of Duncairn: Whatever about that, do you accept that the test—Jeffrey Donaldson outlined this—of no checks between Britain and Northern Ireland and Northern Ireland and Britain has not been met?

Lord Bew: But it was never going to be met. Under Ian Paisley's old acknowledgement, before Brexit there were checks.

Lord Dodds of Duncairn: There were always checks on health issues but not on customs.

Lord Bew: The point here is that the specific regimen of EU checks is now being dealt with. I quite understand that this is an irritation to some people because we now have the technology to provide real-time information. There is a basic problem here. Perhaps you are right; perhaps you should never have said "no checks" in that way, because that could never have been done.

Lord Dodds of Duncairn: With respect, Lord Bew, I think the checks you are referring to are health checks that were agreed by Stormont and Westminster. That was a perfectly legitimate series of checks. We now have checks on British goods for SPS and customs code purposes. They are entirely different. Can I go on to Lord Murphy, as he has been very silent?

Lord Bew: Can I just say something? You know that there were customs checks between Great Britain and Northern Ireland in the 1920s. The union survived. This is the crucial point. How corrosive is this? We had custom checks, and the union survived. From 1947 to 1972, we had the Safeguarding of Employment Act, which the unionist Government put through; it meant that anyone from this part of the world who wanted to work in Northern Ireland had to get a permit. Joining the EU saw the abolition of that.

What I am really trying to say is that these oddities and unsatisfactory irregularities of the real history of the place are such that they are not a significant problem for the maintenance of the union. That is the real argument here—not that there are oddities and irregularities; it is about the weight of them.

Lord Dodds of Duncairn: It certainly puts into perspective the concerns people are raising about the European travel authority and so on. That will be an interesting one to come on to.

Lord Murphy of Torfaen: I was fascinated by that exchange.

Regarding the lack of transparency or lack of answers, the problem is that, very often, the Government just do not know. I sit on the Common Frameworks Scrutiny Committee. We deal a lot with the retained EU law information coming through, and it is a mess—one great big mess. It is a daft law anyway, but that is for another day. On the knowledge the Government have about all these things, they are having to go to the National Archives in Kew to pick out what is and is not law from the EU. A

lot of it is, frankly, down to a lack of competence as much as anything else.

On answering Parliamentary Questions, which are factual things—I suspect you were dealing with factual things that you wanted to find out, as opposed to things that you need to discuss—again, it comes back to it always being better for people to talk to Ministers about it rather than relying on Parliamentary Answers. Nevertheless, they should be there for factual stuff, and my guess is that they do not know half the time.

On the other issue of checks, as Lord Bew has said, obviously you acknowledge that there have been checks. When I was Secretary of State, there were checks coming over, but they were about whether stuff coming from Britain was safe to come into Northern Ireland—epidemiological tests, I suppose.

I go back to the point I made earlier. If you accept that the single market is going to operate in Northern Ireland, it is pretty unavoidable that there are some checks. The issue is the extent and intensity of them. If we can keep reducing and simplifying to the point where they are not a huge obstacle to trade between Northern Ireland and Britain, that must be the aim. I personally I cannot see a complete absence of checks as being possible so long as the single market is there.

Q18 Lord Empey: I want to ask about divergence. What is the significance of the Windsor Framework for regulatory divergence, both east-west and north-south, and to what extent does the framework protect both Northern Ireland's integral place in the United Kingdom's internal market and unique access to the single market? This, I suppose, has been an abused concept; people abused it for a variety of political reasons.

Before I ask the witnesses to answer, I will interject, if I may. Lord Murphy indicated at the beginning that perhaps my party was content with the Windsor Framework. I say to him that we have not accepted the framework, because there remains a border between Great Britain and Northern Ireland in the Irish Sea, which goes back to the Boris Johnson proposals on 2 October 2019, as do the border posts. In fact, the Irish Sea border and the EU law issue were all conceded in that document, called the Explanatory Note.

Our argument is basically that we want to see Stormont working, because that is the only way in which you can coherently argue from a very difficult position in which we have been placed. The Brexit that was achieved was not properly negotiated, as we have heard. We saw that the ERG, with which some people have great faith, voted to the last person for the protocol when push came to shove and put Brexit before the union, in my opinion. I think that will show itself over time.

Divergence between the two markets is something that we are concerned about as a committee. We do not seem to have any proper mechanism in government for recording it, or a place where you can go. Lord Murphy referred to the common frameworks committee that he sits on. What do you think about divergence and how it would develop? I will start with

Lord Bew.

Lord Bew: In this case, the Command Paper is important, because it goes back to strand 3 of the Good Friday agreement, which talks about the need for a harmonious model of relationships between Northern Ireland and the UK. The reality was that the level of checks that we had was in no way compatible with the harmonious model.

There is no perfection available. Brexit has these consequences. I absolutely agree with you. I am inclined to say that people talk in Northern Ireland as if there were some pure state of equal citizenship at any time, but there was not. This was also the case when the unionist Government between 1947 and 1972 required work permits for people from England to work in Northern Ireland. The union survives all these things. The union is constantly evolving. There is no traditional state to go back to, and often it is not what people imagine it was. There were customs forms and so on in the 1920s. It was murky. That is what I am trying to say on this argument about dilution of citizenship.

There is clearly an agenda from this Government, which began under the last Government, of trying to strengthen and make sure of east-west ties, given what happened because of Irish ownership of the Good Friday agreement. Do not forget that the Irish position was, for quite a long time before they knocked off it, that the east-west relationship defended in the Good Friday agreement does not involve Northern Ireland—it is purely about Dublin. It was accepted by Members of Parliament here that it is purely about the relationship between Dublin and London. It is clearly not possible to read what David Trimble negotiated and believe that Northern Ireland is not in there on the very first page. There is a struggle around that, which is now over.

The whole message of the Command Paper is issues such as the island economy and east-west connections, and developing that and the various ideas that are now in play. There is no question that one of the prizes for going back to Stormont would be that the unionist community would be in a far better position to deepen the integrity of the UK single market, which, as I said, the EU acknowledges much more implicitly in this document than it did in earlier ones.

There is no perfect answer here. No one ever promised this. No one ever promised the end of EU law in the negotiations. Boris Johnson, who was often accused of overpromising, most definitely did not promise that. That is inevitably going to stick, quite understandably, in some people's throats. That is my view. There is a prize here. There is a clear disposition, which is obvious in the Command Paper, for the UK Government to strengthen east-west economic ties. There is a prize to develop that.

At the moment, the good will between the UK Government and the unionist political leadership is not great. The political position is not as it was a month ago. From the point of view of unionist politics, it is worse. The reason why it is worse is that the Prime Minister reasonably had a

concern that there might be an ERG revolt and he would have liked DUP help in dealing with that. The DUP did not give him any help and the revolt faded completely anyway. That is one thing.

Secondly, the Prime Minister would like, in principle, for the Good Friday agreement institutions to be up and running before Joe Biden comes. That is not happening either. The cards that the DUP had in negotiation are now dead; they are thrown away. It is not as it was a month ago; it is worse, and the vote shows that. It is worse than the defeat that James Molyneaux had in the aftermath of the Anglo-Irish agreement in 1985. It is a deeper and more profound defeat.

After that, there came the task force report, which had one very pregnant sentence, when Peter Robinson and others reconsidered this position of isolation. He was the co-author of the sentence, which says that it makes no sense for the junior partner in a union to be in a state of permanent estrangement from a larger partner. That is the most important sentence in that report. It was true then and it is true now.

Jim Molyneaux, at the time of the 1993 Downing Street agreement, helped that process quite considerably in the background. It is why David Trimble in 1998 did what he did and why Ian Paisley did what he did in 2006 to 2007. Unionism has now worked itself back to a position of isolation. Peter Robinson has seen this movie once before and he knows how it ends. We are in a very interesting moment. But there is a promise and a commitment in the Command Paper.

On the quality of journalism, in Northern Ireland I have not seen anywhere—it might have happened in the last two days, but I think I read everything—reference to the unilateral declaration posted on the EU website. I mean the unilateral direct declaration by the United Kingdom in the joint committee established under the agreement on 24 March 2023.

This is a meditation on the democratic consent mechanism already in Article 18 of the Windsor Framework. It is the difference between Johnson's agreement and May's agreement. Do not forget that the Assembly was not even mentioned in Theresa May's agreement. It did not exist; it was not even mentioned. That is how far we were from a democratic deficit. We are now talking about brakes. It is a meditation on how this might or might not operate. I have seen no mention of this in local discussions.

I am open to the argument that people will read it and say, "I do not like this meditation", but this is one reason I say that the level of discussion has been poor. People have been trying to hide the fact that they were caught on the hop by the degree of change and, because they are naturally cynical, continuing to disrespect the actual negotiating achievement.

But the Government are not doing enough. I think they should make clear why they believe they have met the seven tests. I do not think they just threw that out there. There is an issue of timing around that, which

is quite complex, but I do not believe that they said, just to pass the time of day, "We think we met the seven tests". I mean the real seven tests—the original ones—not the seven tests that have subsequently been expanded outwards and elaborated.

I do not believe you would say that. This is the way Governments work; you do not make that statement unless you think that you have something to back it up. Paul is right that Ministers particularly will not know. The detail on this negotiation is massive; it is incredibly complex. It is perfectly obvious that not all Ministers are totally on top of it.

That really is not the point. I think there are people in the system who are totally on top of it. There should be heavier, more honest engagement between the Government and the local parties—all of them. This would allow them to step back, which they were advised to do by the way, and debate. That is not really working.

Lord Murphy of Torfaen: The seven tests—although they say it in the framework—have not been addressed individually and well. There is a case for a further document from the Government to say that.

My apologies to Lord Empey. I was imprecise in what I said, in the sense that the policy, as far as I can see, of the Ulster Unionist Party is to return to Stormont and then try to thrash these issues out there, even though there are misgivings about some aspects of the framework. In the 74 years that I have lived, the United Kingdom has been changed dramatically. I agree with Paul: I think that is going to happen even more as we progress over the next couple of decades.

Regarding the divergence in strand 3, as the committee knows, I chaired strand 3 in the talks along with Liz O'Donnell from the Irish Government. It is a part of the agreement that has never really been addressed properly. Now that we are out of the European Union, there is a very special place for those bilateral arrangements and discussions within the context of the Good Friday agreement to be utilised in a much more effective manner than they have been in the past.

Arrangements are there—for example, the British-Irish Intergovernmental Conference and the British-Irish Council. They have not been well used, but now there is a chance for them to be used and to address the issues of British-Irish relations, including trade. I hope that the Government will do that.

Q19 **Baroness O'Loan:** In the context of the Government's reference to the removal of the 1,700 pages, about which we have already had some discussion, what impact will the Windsor Framework have on the extent to which EU law will be applied to Northern Ireland? What significance will this have, politically, constitutionally and economically? I accept that you probably feel you have answered these questions to some degree, but is there anything you wish to add?

Lord Bew: I respect the position that it does not matter if it is only 3%. I understand that position. However, I have said I think it is more coherent

for Jim Allister to take that position. I have also said that I do not think his description of reality is correct, but there is an internal logic; I accept that. There is an argument that the UK is no longer under EU law, and I absolutely accept that.

I am afraid that I simply take the view that Northern Ireland faces both ways. We have to accept that the communities face both ways and there are going to be loose ends. I accept that partly it is the consequence of Brexit. I was thinking when Lord Dodds was speaking about the interview that he gave to "Newsnight" in 2019. In that interview there was a clear, profound sense of where Brexit, from many points of view, had placed Northern Ireland unionists. Lord Dodds gave a reflective and slightly wistful interview, but intellectually it was totally coherent. I am afraid that he was right then. We just have to live with the question of what is the lesser of two evils going forward, and to me it is clear which it is.

There is, as you know, this thing about these pages. I suspect that technically, everything about these pages is probably correct. Pages are removed because one EU regulation probably takes 25 pages. I suspect that someone, somewhere has added this up and got it right. That would be my absolute instinct. But if you were to say to me, "It does not mean that much to me", that would also be right.

Lord Murphy of Torfaen: The hype is there to sell the agreement. You accept that that has to be done from time to time. But I come back to the central dilemma that I do not think can be resolved easily, if at all: if we are out of the European Union and the Republic of Ireland is still a member, then we have a dilemma that we will always face. We must try to ensure that the issues that arise from that are mitigated as much as we can, and that is what the framework does.

The Chair: I think the wistful Lord Dodds has a right of reply.

Q20 **Lord Dodds of Duncairn:** On the 1,700 pages, why do you think no one will tell us what those laws are?

Lord Bew: First of all, there was a clear decision to step back.

Lord Dodds of Duncairn: I am asking about the 1,700 pages. It is a straightforward question.

Lord Bew: I get that, but I do not think that over the next few weeks the Government are going to be in a position to offer explanations of what they mean by that. I suspect it is truthful but means in real terms somewhat less than you might have thought. I just think the way government works is that someone went ahead and counted.

Lord Dodds of Duncairn: You do not need to be Einstein to work out that, when those are revealed, none of the actual protocol will be disappplied.

Lord Bew: All I am saying is that the much more important thing is the Government's commitment or suggestion that they felt they had met the

seven tests. I do not think that a Minister just decided to say that on the morning of the launch of the document. I would be amazed if there was not a serious and substantive discussion behind the scenes of the original seven tests—not the seven tests that they became. They have now been expanded outwards.

Q21 Lord Dodds of Duncairn: On that point, obviously the DUP—no doubt the party officers and the leadership—will decide itself whether its tests are met, not others. There is this idea that the tests have been expanded out in all their aspects, but that is wrong. This is not the place for a debate on that; there will be an opportunity later for debate on these matters.

On the wider point about the issue of democratic consent, there is the point about EU law being necessary as part of this overall package. Nevertheless, there is a possibility that in 2024 this could all be disapplied under the mechanism that is still there—it has not been changed—of a majority vote of the Assembly.

If it is so essential to have EU law, there is the issue that it can be disapplied completely by the Assembly. The question is: if the Stormont brake and everything else regarding the operation of the Assembly is predicated on a cross-community vote on anything of any substance, why do you think there is that particular brake?

Lord Bew: This is a point that I have heard you make a number of times. The first thing, which is totally forgotten, is that this was negotiated in 2019. It was an attempt to at least ensure that the Northern Ireland Assembly was in the withdrawal agreement, which the May Government had absolutely failed to do. That is how radical the collapse of any concept of democratic consent or deficit was at that point, because she was in a very weak position.

The Johnson Government was somewhat stronger. The first letter to the EU opening the Johnson Government negotiations says that we think the delicate balance of the Good Friday agreement is not being respected by the arrangements agreed by the previous Prime Minister. That is how it opens; it is the very first letter.

We were in a very weak position. We knew that Parliament said that you cannot have no deal, which therefore greatly reduced the Government's negotiating position. The Johnson Government's position was stronger than May's, but not that much stronger. The one thing they were determined to do was to get the Assembly in.

Secondly, the 2017 general election was the major test that preceded that agreement. The unionist vote was such that it could even be said by some to be predicated an absolute majority. We are now living in a world where, for one reason or another, there has been a pretty marked collapse of the unionist vote. Your own party's vote was 36% in the general election, I think, although polling said 25%. I totally accept that we have to be careful about Northern Irish polling.

We are now looking at this from the point of view that, in a relatively short period of time, the unionist political class's capacity to win outright a vote in the Assembly has collapsed in a way that no one would have thought when they were negotiating this. When looking back, they were looking at the most recent electoral outcome. There was a very high pro-union percentage in 2017. It is worth remembering, when going into the discourse of how much of a let-down it is for unionists, that it is partly a let-down because of the subsequent collapse of the coherence of unionist politics at different levels. Now there is the inability to get a vote of that sort.

By the way, 2017 also shows that if you run an election with the British Government broadly in the flow—east Belfast is an example, where Reg is sitting at the moment—your vote will go up. But if you run against the British Government, as happened in 2019, and say “We’ve been betrayed”, your vote collapses from a 9,000 majority to 2,000, to take one simple example.

There is an argument here about unionism putting itself in a position of thinking that running against the British Government is a smart move, but the evidence of recent years suggests that it is not. It suggests that, for people who say, “Oh, I am defeated again”, two-thirds will remain loyal and say, “We were defeated; it is shocking”, but one-third will say “I think I would rather vote for the Alliance Party”. It is very simple. Political calculations have to be made here about the way forward.

To the nub of your question, it is a problem. It was not a betrayal; it was the best that could be done, and at the time it was negotiated it was considered to be possibly credible on the basis of previous election results. You are absolutely right, but let me explain, it was a gratuitous act by—

The Chair: Could we be very quick about this as we are short of time?

Lord Bew: I will be quick. There was no gratuitous betrayal of the previous rules because, under the rules on which the Good Friday agreement functions, trade was a reserved matter. It was a decision by the UK Government to put that to the Assembly—they did not have to do that—for a vote, as I understand it.

Secondly, because the Government are uneasy about it, they produced this document, which is on the EU website, about how this might operate. There are various reflections about the complicated way in which this could be done and how to do it. That is why I say that the local discussion is feeble. There has been no discussion of the fact that the UK Government posted this on the website. The local discussion is behind the game.

Lord Dodds of Duncairn: As a matter of fact, the 2020 regulations to introduce the majority vote came at a time when we had had further elections. The idea that this was predicated on a unionist majority is certainly not the case.

Lord Bew: That was true then, but when this was negotiated a unionist absolute majority was not inconceivable on the basis of the previous electoral turnout.

The Chair: I know that Baroness Ritchie and Baroness O’Loan have questions, but I think we should move to Lord Thomas and the last question. Let us put 12.30 pm as a final cut-off point.

Q22 **Lord Thomas of Gresford:** What a privilege it is to listen to two people with such huge experience and who lived through the most important times in Northern Ireland.

What is your assessment of the governance of the framework and where the CJEU stands at the moment? The Europeans have said that there is no change in the position of the European court; it is still there, nothing has happened. But the UK Government have given a completely different impression, that we have got rid of all these laws and only 3% remain. What changes do you think will be made to the role of the European court under the framework?

Lord Murphy of Torfaen: I do not know what might happen. All I know is that the issue seems to have dropped down the agenda and does not seem to be as significant as others. The only real way in which this can now be addressed, assuming that the institutions are revived, is for the joint committee, the Assembly and the Executive to look at this and see where they are going with it.

It seems that something which was central to the issues we have faced over the last year is not that significant. I assume that the Government think that everything else in the Windsor Framework is sufficient to address the democratic deficit. Whether that is likely to assuage the DUP and others, I do not know.

I want to say something about the previous point made to Lord Bew. Ultimately, issues such as whether it should be a weighted majority or a simple majority in 2024 should have been dealt with by the Executive and the Assembly when all this was being negotiated. It all goes back to the point I was making earlier, that all this stuff on Northern Ireland was simply neglected. The consequence is that these huge issues—and they are big issues—could have been resolved through multi-party discussions in Belfast and they were not. That is the problem.

On the European court, it seems like an issue that is not as important as it was. Its importance could be reflected when this is discussed in the joint committee later.

Lord Thomas of Gresford: The Stormont brake looks to me like the Grand National: there are so many jumps to get over that conflict can arise at almost any stage. It could eventually arise in the joint committee, which would then be resolved by arbitration, with any points of law going to the European court. That seems to be the framework.

Lord Murphy of Torfaen: The point that Paul was making earlier is that now the First and deputy First Minister would be members of that committee, which makes admirable sense. I do not know why it was not thought of in the first place. It means that there is a different perspective that could be brought to the issues.

The complexity of the Stormont brake—it is absolutely right of you to raise it—is that a lot of what might be available on paper and as a last resort ought to be resolvable through talk and negotiations when the Assembly and Executive are up and running. That is the best way of doing it, rather than, as I say, pressing the nuclear button.

Lord Bew: I have already mentioned some of my regrets about the Windsor Framework. The biggest one is the vague references to “unforeseen circumstances” which cropped up and led the two Governments to rethink. We should have been honest and said that it damaged the Good Friday agreement. We had an agreement which committed to implementing the Good Friday agreement and strengthening it in all its parts but was not doing it. I find those “unforeseen circumstances” to be weasel words. That is what the unforeseen circumstances were. It would have been better if that had been said explicitly.

I have a second regret. You have advanced in this committee very subtle ideas for the type of legal joint committees and so on that might have been applied. I honestly expected that something in that area would be arrived at, and that would have been helpful. I would not be surprised if something like that evolves, because those were very helpful ideas. I was listening very keenly to the things you said. But Lord Dodds is right about this: if EU law and the role for the CJEU is there and you cannot live with that, then you cannot live with it.

I have said that there are a lot of other things to be taken into account, and the biggest one of all is the future of the union. It is one in which, frankly, unionist politicians opposed to this really have no cards left to play. The assumption is that the world is waiting for them to move in—it would be very good for Northern Ireland—but the world is not waiting for them to return to the Executive. Some people would like that, but it is just a card to play, and it is not what it was even a few weeks ago. Other people have all the cards now. I totally disapprove of this talk about changing the rules for the Assembly. I absolutely agree that for three years Sinn Féin was out, and no one did that. None the less, there is no way of stopping that conversation. There are other cards available to the Government, such as a referendum. Eventually, when you are trying to sustain what is clearly a minority position, according to polling—although I cannot say scientifically how much of a minority position it is—there is a limit to how far this argument can and ought to be pushed.

There is the argument that the CJEU is still there. By the way, I have not heard the Government say it is not, and I have not heard them say that European law is not there. Foremost in my mind, for some reason, is Boris Johnson’s article in the *Belfast Telegraph*, which was designed

largely to appeal to unionists, repeat the Blairite themes of the Balmoral speech and modernise them for a quarter of a century on. It was explicit, from a nationalist community point of view: the role of European law and no hard border were just written into the script, and the UK Government have not tried to rewrite that bit of the script at any point in this negotiation.

- Q23 **Baroness Ritchie of Downpatrick:** Lord Murphy, you referred to the need to be able to use the institutions of the GFA, particularly the underused British-Irish Intergovernmental Conference. Now that relations are better between the UK and Ireland, how do you see that developing as per what is outlined in the agreement? I suppose that in many ways, it has been underutilised over the last 25 years.

Lord Murphy of Torfaen: It was underutilised because sometimes they did not need it, since they were all members of the same club—the European Union. That meant that day in, day out and week in, week out, Ministers and officials in Brussels and elsewhere would get together and resolve those issues bilaterally within that context, but now that has gone. It is not easy for Ireland to deal with this because it is still a member of the EU, and of course the EU negotiated as a bloc with the United Kingdom for the Windsor Framework. However, the international Good Friday agreement provides for that bilateral arrangement.

A possible improvement, for example, could be committees of the British-Irish Council, with Ministers from different parts of the UK—Scotland, Wales and Northern Ireland—and Ireland dealing with issues like health, education and so on, swapping best practice. There is nothing sinister about that. They would be talking about how they deal with issues in their particular countries, but also making use of the BIIGC as a proper means by which to sustain and improve good diplomatic relations between Ireland and the UK, which, frankly, have been at rock bottom for the last two or three years.

Baroness Ritchie of Downpatrick: Coincidentally, I remember having a housing sub-group of Ministers within these islands as part of the British-Irish Council. It worked quite well, dealing with not only engagement but the sharing of best practice with a view to increasing the level of housing.

- Q24 **The Chair:** I have one further small question for Lord Bew. You have talked once or twice about the EU having buyer's remorse. Could you say a little more about what you mean by that, briefly?

Lord Bew: You do not have to spend too much time looking at discussions among EU members to find concern that the brake concedes too much to a local unionist veto. That is what I meant. Again, as clearly stated by the SDLP, whose position is—how should I put this?—frequently quite close to that of the Irish Government, which is an EU member, there is a genuine concern.

I do not believe it is of major significance, because there are non-Irish reasons why the EU wanted this new negotiation, to do with Ukraine and

a number of other considerations. There are also non-Irish reasons why the UK wanted this negotiation. I do not regard that, from the point of view of Northern Ireland, as being at all illegitimate; if you are part of the United Kingdom, that this is what it means. None the less, that is the context. Broadly speaking, a decision was clearly made at a very senior level in the EU to try to create the best possible context for this to work for the UK Government.

I do not think there is any doubt that the approach is very different from that in the 2017 and 2018 agreements. The mood has changed. No one is interested in giving Britain another punishment beating. We have done that once, and to them, the agonies of Brexit—the joys, to other people—are obvious. However, that is not the point.

There is a very different context here. There was clearly some indigestion—not massive, but some. Questions such as “Have we gone a step too far?” were asked, for reasons that have been raised, reasonably, by the SDLP in the Commons and in other places—and there is no mystery as to what those reasons are. That is the reality.

What I am really trying to say is that, as I referred to earlier, there were statements, particularly by politicians in the European Parliament and so on, and now there is a signed agreement. It was said that the same weight should be given to the comforting things that were said in our Parliament in the wake of the 2017 agreement, such as “No, it’s not real; it’s not over”. It was over. I am sorry, but it was signed on the dotted line. International agreements actually mean something. Commentaries from EU enthusiasts, European law enthusiasts and British politicians have to be taken with a pinch of salt.

The Chair: Thank you, both. That has been a hugely enjoyable as well as extremely useful conversation. We are extremely grateful to you, Lord Murphy and Lord Bew, for appearing before us. It has been helpful to us in our inquiry, and I have no doubt that we may return to some of the points we have discussed this morning in the Chamber this afternoon.