

# Protocol on Ireland/Northern Ireland Sub-Committee

## Corrected oral evidence: The Windsor Framework

Tuesday 16 May 2023

11.30 am

[Watch the meeting](#)

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. 7

Heard in Public

Questions 72 - 83

### Witnesses

**I:** The Rt Hon James Cleverly MP, Secretary of State for Foreign, Commonwealth and Development Affairs, Foreign Commonwealth and Development Office; Mark Davies, Director of the Windsor Framework Task Force, FCDO; Peter Wilson, Director-General for Europe Group, FCDO.

### Examination of witnesses

James Cleverly MP, Mark Davies and Peter Wilson.

**Q72 The Chair:** Welcome to this public meeting of the Protocol on Ireland/Northern Ireland Sub-Committee. We are today holding the seventh and final public oral evidence session of the committee’s inquiry into the Windsor Framework to inform its report on the Windsor Framework to be published ahead of the summer recess in July.

We are delighted to be joined by the Foreign Secretary, the right honourable James Cleverly MP. He is accompanied by Peter Wilson, director-general for Europe Group, FCDO, and Mark Davies, director of the Windsor Framework Task Force in the FCDO. You are very welcome, Foreign Secretary, as are your officials. It is, I think, nearly a year since you, Foreign Secretary, were last before us. Much has happened in that time, so we very much look forward to your evidence to us. We have until 1.15 pm sharp—and we will finish then, as promised. Today’s meeting is being broadcast and a verbatim transcript will be sent to you all to check for accuracy. I refer to the list of Members’ interests on the committee’s

website.

May I begin by asking you to describe the process, in which you have been heavily involved, by which agreement on the Windsor Framework was reached between the UK and the European Union?

**James Cleverly MP:** I preface my answer by thanking you and the committee. At your invitation, we have met at a number of stages of the incubation of the Windsor Framework and the negotiations that led up to it. You and the committee have been very patient. I said that I would prefer to appear before you when we were at a point of conclusion. I will explain why shortly, but I think that that space for me, and, by extension, Maroš Šefčovič and his team, helped enormously in our ultimately getting this over the line.

I thank you and the committee for the reports that you periodically put out throughout this process, which gave a very well-informed and, more importantly, cross-party view on some of the challenges and problems that needed to be addressed. I know that that helped to focus minds on both sides of the negotiating table and to move us forward. I will refer to the significance of those things as I answer.

As you are aware, I was Europe Minister prior to becoming Secretary of State and therefore was involved in some of the rounds of negotiations, at the point where the negotiations had stalled. You will know that the last couple of rounds of negotiations had not made the progress that we or the Commission had hoped for. I am sure that many books will be written on what caused the shift in dynamic. Some of your reports were very useful, particularly in highlighting the fact that actual problems were created by the protocol. I remember that at some of the negotiations the position of the Commission and some others was that the protocol was fine and needed to be implemented in full, including the bits that had not been implemented because we were in a pause—that if we just battened down the hatches and got on with it, everything would be fine.

Your reports and comments made by others highlighted the fact that genuine problems needed to be addressed. There had been water under the bridge, and when Maroš and I first started talking the first thing we decided, before getting into the nuts and bolts, was that this needed to progress and that it was well worth our putting in the time, effort and, perhaps on both sides of the channel, political capital to move it forward.

We made our position clear: Northern Ireland's position within the United Kingdom absolutely had to be protected in all respects. We both agreed that the principles underpinning the Belfast/Good Friday agreement absolutely had to be protected but that we wanted to get this resolved. We started a series of periodic face-to-face meetings and telephone calls, between which our officials, at various levels, including quite senior levels, met intensively and regularly.

The point I made about giving us both space was relevant. We decided early on that the constant drip-feed of briefings to the media over the previous few years, with both sides around the negotiating table trying to

justify their positions and talk down the other side of the table, had been very corrosive—massively counterproductive. We maintained a policy of putting out pretty much joint statements that were anodyne and, frankly, lacking in detail while we carried on with the work.

The technical issues that our officials had been working on, including working through the list of concerns presented to us by the unionist communities and representatives thereof, formed the basis of our work. Ultimately, this was distilled down to the knottier problems, which were escalated to Maroš and me. We negotiated them down until, finally, we got to the last few, very contentious and politically difficult issues, including some of the points around the Stormont brake and various bits and bobs, which had to be escalated to leader level. The Prime Minister and Ursula von der Leyen worked together on the final few quite difficult and contentious issues. As we saw with the signing of the Windsor Framework, we got resolution on that, and the rest, as they say, is history.

The thing that really made the difference was the recognition that something needed to change; the status quo was not working—and certainly what would not work was full implementation of the protocol. The recognition on both sides of the negotiating table of that truth helped to provide the impetus for the quite intensive months of negotiations at official level, at the level of Maroš and me, and the level of Prime Minister to Ursula von der Leyen.

**The Chair:** Thank you very much indeed—that is a very good start. We will take up some of the points that you mentioned in the questions that follow.

You talked about relationships with Maroš Šefčovič; the committee hopes to see him when we go to Brussels next week. Despite what you described as important agreements between you, there have at least been some slight disparities in the public statements issued by the British Government and by the European Union. What significance should we attach to them?

**James Cleverly MP:** I think that on the substantive elements of the agreement we are absolutely as one. When you are explaining quite a broad and detailed range of procedures and circumstances, it is inevitable that different audiences will want to focus on and be concerned about different elements. The underpinning message remains consistent between the two counterparties, but the areas of concern of our respective audiences will vary. Unsurprisingly, therefore, when the UK is explaining the agreement, we focus on the areas where our audience is most interested and, when the EU does so, it focuses on the areas where its audience is most interested. I do not see any inherent contradiction in that.

The arrangement that we made was designed to square a circle. The challenge that we had in the past was that the UK was focused on ensuring that Northern Ireland was fully, properly and permanently

secure as a part of the United Kingdom, with its rightful place within the UK internal market. The Commission was very concerned about the preservation of its market, and that is where we had those points of difference.

We sought to turn what had been a conversation about theoretical problems into one about practical problems and how we might resolve them. That is where we have ended up, with both sides accepting a degree of theoretical risk that we think is very manageable in the real world. Moving from protecting against theoretical risk that might never crystallise to practical risks that can be mitigated is what helped us to shift and ultimately get a deal over the line.

**Q73 Lord Hain:** You are very welcome, and we appreciate your time with us. I congratulate you and the Prime Minister on rebuilding some trust with Dublin and Brussels, which had broken down. The proof of the pudding is in the eating: you delivered an agreed Windsor Framework.

Many have said that the Stormont brake will hardly, if ever, be used and that what really matters is the scrutiny capacity of the Northern Ireland Executive and Assembly and the ability of Ministers, officials and Members of the Legislative Assembly to be consulted. What detailed mechanisms will there be for them to be consulted on new EU legislative proposals that will apply to Northern Ireland?

**James Cleverly MP:** Thank you for your kind words about rebuilding a relationship of trust. In any negotiation, there has to be a foundation stone of trust—otherwise it does not matter what you say. If the points you are making in a negotiation are not believed by your counterparty, there is almost no point in speaking. It was about trust in Ireland and in the Commission, but for me—this is one of the points I made very strongly when I went to Northern Ireland with the Secretary of State for Northern Ireland—we needed to rebuild trust across all the communities of Northern Ireland: civic society, the political community and the business community. I have always regarded this as a three-legged stool, and it does not work if you do not have trust in those three pillars. It is important that we make that point.

The Stormont brake is incredibly important. It is a unique mechanism that Stormont has—it is not replicated in any other part of the UK—because of Northern Ireland's unique relationship with Ireland and, by extension, the European Union. It specifically addresses that democratic deficit. Arrangements such as the Windsor Framework or other arrangements are done from the UK-wide Government with a counterparty, but we are conscious that to rebuild the trust—not exclusively, but particularly of the unionist community—we had to demonstrate that things would not be done to the people of Northern Ireland by external powers without them having a voice, and for the voice to be really powerful.

You say that it is unlikely to be used. We hope it will not be needed. We hope we will resolve potential diversion issues before it needs to be used,

but it is there for a reason and it is powerful for a reason. It is not envisaged that it will be used lightly, which is why it is set at two parties and 30 MLAs at least to make sure it is taken seriously by all parties. Because it is structured as such, the UK Government are bound to take it very seriously, in a political sense—if it were a treaty, it is inconceivable that the British Government would ignore it—and there is legal protection anyway. It is designed to be used if necessary, but ultimately we want to avoid creating circumstances where there is the necessity of its use. If Stormont decides on this, it presents a very powerful and effective voice to the UK Government to take heed of those concerns, to take immediate action and to seek immediate resolution.

**Lord Hain:** Accepting that, the day-to-day reality is that Ministers, officials at Stormont and Assembly Members need to be consulted to eradicate or at least reduce the democratic deficit—otherwise, Northern Ireland’s legislature is bound to feel that new EU proposals through the single market apply to it.

**James Cleverly MP:** Yes, that is a very fair point. One of the concerns raised with us through the negotiations is that the negotiations were done very much in private. I have seen, not just in a political sense but in the commercial world, negotiations conducted by committee. It does not work. There was always a balancing act in engaging with stakeholders in Northern Ireland—political, civic, business and others—to inform the negotiations with the EU. Now that the negotiations are done, we absolutely intend to ensure that we continue to work very closely with political representatives in Northern Ireland and listen very much to the business community and civil society.

**Lord Hain:** Through the Joint Committee?

**James Cleverly MP:** Yes, through direct engagement, through the Secretary of State, through the institutions and, ultimately, once Stormont is back up and running, through Stormont itself. That will inform the work that we do in the Joint Committee—thus, I hope, avoiding the need for the Stormont brake. We absolutely envisage close co-operation, co-ordination and engagement with Northern Ireland and the voices of Northern Ireland, political and others. Formal engagement through the political process will be fully effective only once Stormont is back up and running. That is why we are very keen to see that institution up and running as soon as possible.

**Lord Hain:** Given that, would you see ministerial and official direct representation in the Joint Committee from Stormont or its sub-committees?

**James Cleverly MP:** I think we have good mechanisms for ensuring that we have political input. I must confess that I lose track of the names of the various formal engagement groupings that we have as part of the Joint Committee process. We have a business engagement group. The political structure has a pre-existing framework—Stormont itself—and we would seek to engage with that fully. We do, of course—

**Lord Hain:** Forgive me, but engagement is one thing: formal, representative, direct consultative avenues and channels is something else, and you have not spelled that out.

**James Cleverly MP:** We have committed to having the First Minister and deputy First Minister formally at Joint Committee to be that voice of Stormont in the work that we do with the Commission. Once Stormont is up and running, that provides the natural and right conduit for the voices of the political structures in Northern Ireland to feed directly into the processes. We will have the business groups and will continue to have other forms of engagement, but ultimately the political voice of Northern Ireland's people in this process can only be put fully into effect once Stormont is back up and running.

**Lord Dodds of Duncairn:** Surely the role of a legislature is more than just saying no to something presented to it, especially when it comes to a whole host of laws and important areas of economy. What do you say to the criticism that the Stormont brake just allows elected representatives of the people to say no? What about the formulation of policy? What about the development of laws? What about thinking of new ways of doing things? What is the role of MLAs in any of the areas covered by the protocol?

**James Cleverly MP:** I absolutely think that the Executive inevitably will and should have a voice in the production of ideas and feedback. It is the role of elected representatives to be the voice of the people they represent. The whole point of the engagement element is to make sure that the UK Government and the European Commission are the two formal interlocutors in this relationship, but we want to make sure that the things that we put forward, the things that we say and the things that we pursue are very much informed by the voices of Northern Ireland, the conduit of which are the elected representatives of Northern Ireland.

**Lord Dodds of Duncairn:** What about EU laws? How do Northern Ireland's representatives in the Assembly develop, formulate and pass laws relating to the economy in their own right?

**James Cleverly MP:** I shall try to answer your question, but if I have misunderstood please pull me up.

The UK does not dictate to the EU about its laws either, whether that be Stormont, Westminster, Holyrood or the Welsh Senedd. We have a voice, and hopefully through the Joint Committee and other, perhaps less formal, ways of interacting with the Commission we will highlight the implications of any decisions it might make. But the whole point of our leaving the European Union is that it cannot dictate to us and we cannot dictate to it. We can put forward the implications of decisions and ideas, and because of the north-south relationship between Northern Ireland and Ireland it is understandable that Northern Ireland might have more interest or a greater voice, or whatever, but inevitably there will be decisions made by the European Commission that have an impact or implications across the UK. We would feed our ideas, thoughts and

concerns to it as an interlocutor, as we would with our membership of the CPTPP and other multilateral fora on which we sit or have an interest. When it comes to Northern Ireland, of course we would quite rightly listen to the elected representatives and feed that into the EU as well. That is quite a natural process.

I hope that the fact that the Stormont brake exists will focus minds not just in Stormont but in Westminster and Brussels. If decisions are likely to have a significant impact on the people of Northern Ireland, as envisaged in the Stormont brake, it would be flagged to us and, as the primary interlocutor with the EU, we would flag it with it and say, "If you are intent on pursuing this route, it could have consequences for Northern Ireland". That would be a stimulus to think carefully, but we cannot demand that it does not take actions, and if they have implications UK-wide or specifically to Northern Ireland we cannot demand that it does not do certain things. We can flag our concerns about the implications of any decisions it makes, and ultimately, if they are having a significant effect, the Stormont brake is there for a reason. It is an insurance policy, but as with so many insurance policies we would seek to find a way of navigating it that does not require its activation. But it is there for a reason. We made it powerful for a reason. As with all powerful tools—I am stretching the metaphor too far, perhaps—it is not something you would want to deploy willy-nilly, but it is there for a reason. It is envisaged to be utilised in certain circumstances.

**Lord Godson:** The Government are to be commended for their laser-like focus on restoring the centrality of the Belfast/Good Friday agreement in their negotiation of the protocol. The east-west dimension was fundamental to my late noble friend Lord Trimble's negotiation of the Belfast/Good Friday agreement in 1998.

Much of the debate in Northern Ireland—perhaps too much—seems to assume that, if the DUP were to return to government it must be, as it were, as passive recipients of whatever the process throws at it. Were it to return to Stormont and find that the commitments made in the Belfast/Good Friday agreement and Windsor Framework, including in the Command Paper of last February, were not being delivered, it could still, if the Joint Committee between the UK and EU did not properly address its concerns, have a spare parachute and, on the second set of grounds, withdraw from those institutions. Will you comment on the guarantees if its concerns are not being addressed?

**James Cleverly MP:** Taking a step back, I want to restate something I have said in this committee before and about which I feel incredibly strongly. I am a unionist. Throughout my time in the negotiations I always had that very much at the forefront of my mind. I reminded Maroš and the Commission team of that fact.

I made the point that none of us should seek to pick and choose which bits of the Belfast/Good Friday agreement we wanted to protect. You either protect all of it or you protect none of it. Our duty was to protect all of it, which meant that it was not good enough to say, "The north-

south bit is working fine, so let's leave well alone". I have spoken to members of my party from Northern Ireland, from other political parties in Northern Ireland and to individuals, people, who described themselves as unionists not affiliated to any unionist political party. They all told me that the east-west business mechanism was broken and was causing real problems in the preservation of the Belfast/Good Friday agreement.

The point I made in the negotiations is that we either fix both the north-south and east-west or the whole thing is not working. That required some really big practical steps. I had that at the heart of every conversation. I said that we cannot dismiss the concerns of unionists in Northern Ireland. I will not say to unionists in my party or in other parties, "Suck it up. Your concerns are illegitimate or unreasonable". I never did and I never would.

That is why we worked so hard to address the specific concerns highlighted to us about east-west trade as well as north-south trade. To that point, we recognised that in order to get this over the line there would always be elements where we needed to demonstrate a bit of flexibility to preserve the Belfast/Good Friday agreement. We also envisaged that if those points of flexibility got to the stage where they were felt to be compromises, and compromises too far, there is a safety mechanism, and no one is locked in to the point where they are forced to be passive.

Passivity is not an attribute that I would use to describe many friends—not from my political party—in the unionist community in Northern Ireland. They are passionate representatives of their communities, and rightly so, and the Windsor Framework absolutely envisages that they will remain passionate representatives of their communities, that they will have a voice and that they will have authority.

As I said on a number of occasions, we want Stormont back up and running, but that does not imply that the representatives in Northern Ireland, whatever geography or community they represent, will suddenly lose the ability to be passionate defenders of their geographies or their communities or the interests thereof. That is a golden thread that runs through all these things. It is absolutely right that representatives of those communities have a voice—and a meaningful voice. It is not just shouting into the void. That is certainly how, from the UK Government's point of view, we envisage this moving forward. The Stormont brake is one example of that, but short of that there will still be very much the opportunity for representatives to have their voice, to feed in and express concerns and express the future direction of travel. Of course, it is the Government's duty and in the UK Government's interest to listen carefully to those voices.

**Lord Godson:** Will you say a little more about the agency that unionists would have if they moved away? My late noble friend Lord Trimble took a risk in 1999 to 2000, and the commitments that were entered into, in those very different circumstances, were not fulfilled—but he, on behalf of what was then the majority stakeholder in the unionist community,



could move away without being blamed by the UK Government. That is the question.

**James Cleverly MP:** You make a very important point. The late Lord Trimble, it goes without saying, did a huge amount on behalf of all the people of Northern Ireland, not just the unionist community, and was instrumental in driving forward the peace process. I should have paid tribute at the start of my comments to the late Lord Peter Brooke, who was instrumental in this and who passed away yesterday.

It is really important that everyone recognises that this is not a one-way valve, and that the elected representatives of Northern Ireland must have agency, must have a voice, and it must be meaningful. One of the points that I have made regularly to people internationally who have an interest in and expressed their views on Northern Ireland, particularly those who invited me to condemn representatives of the unionist communities when they pushed hard on some of the issues that they were concerned about, is this. One of the reasons I said I would never just say, "I'm sorry, your concerns are going to be disregarded", is that one of the big risks that people in the political class took in Northern Ireland 25 years ago was to disempower the people of violence and to take the power back to the political representatives.

I have always said that, if we want to keep the power in Northern Ireland with the political representatives rather than the people of violence, they have to have a voice, and their communities have to see that that voice is listened to and meaningful. That was always at the heart of my negotiations. That is why it is very much in the UK Government's interest that we demonstrate regularly and genuinely that the elected representatives of the people of Northern Ireland have a real voice and agency on behalf of their people. That is why the people of Northern Ireland should maintain the 25-year tradition of empowering their political representatives, rather than people who claim to act on their behalf and use other means for change.

Q74 **Lord Empey:** Good morning, Secretary of State; I am glad to see you back before us again.

Following on from Lord Godson's question, I would make an observation as someone who was there 25 years ago. I and many others believe that David Trimble was badly let down by London as a result of what he did—but that is for another day. What I want to ask you is specifically because many people here have rejected the Windsor Framework, for a variety of reasons. In that regard, do you, as the Government, intend to seek to negotiate fundamental changes to the Windsor Framework with the European Union during the lifetime of this Parliament?

**James Cleverly MP:** The very simple answer to that is no.

**Lord Empey:** That is fair enough. You cannot be more succinct than that. Do the Government intend any alterations to domestic legislation to clarify Northern Ireland's strength and place within the UK internal market, and would such changes take precedence over our international

agreement with the European Union arising from the Windsor Framework?

**James Cleverly MP:** I am going to come at that question from the other direction. The starting point in all our thinking and actions is that Northern Ireland is an absolutely intrinsic part of the United Kingdom. I think it was in front of this committee that I said this, and I absolutely mean it. Northern Ireland is as much a part of the United Kingdom as north Essex, where my constituency is situated. It is an indivisible part of the United Kingdom, and its place within the UK internal market is absolutely secure.

This is where I will come back and give a bit of a supplemental answer to my answer to your initial question. The reason why we worked so hard on the Windsor Framework negotiations the first time round was that it was Northern Ireland's place within the UK and the UK's internal market that was being stifled by the protocol. When I spoke to people in Northern Ireland and people from Northern Ireland, I was given numerous examples of practical difficulties. I was at a plant nursery in Northern Ireland, a family-run business, and I spoke to a lovely lady whose name eludes me—I apologise for that. She explained why it was becoming increasingly difficult to get certain roses, seed potatoes and Jubilee oaks from GB, and that the bureaucracy and cost meant that GB suppliers were refusing to supply to Northern Ireland. She said, "Look, those are just some of the practical examples". Other sectors gave me other examples. That was the bit that we needed to fix.

Obviously, the negotiations that culminated in the Windsor Framework were always our preferred options, but I will remind the committee that, of course, we put the Northern Ireland Protocol Bill before the House—a number of you are very well connected, I am sure, across the channel—and it was really unpopular, which is a proper traditional British understatement, with our interlocutors in the European Commission. Had that progressed through all its parliamentary stages and received Royal Assent, I know that that would have caused huge amounts of friction between the UK Government and the European Commission. It was there for a reason, and it was there to address the issues that were raised with us from the unionist communities and their representatives about the feeling that Northern Ireland was being pulled away from its rightful position in the United Kingdom.

I was willing, if need be, to cause damage to our bilateral relationship with the Commission to protect Northern Ireland's part of the UK, and I made it clear to it that I was willing to do so. I also made it clear that it was not my preferred option, and that I preferred to resolve the issues that were raised with us by the unionist communities and others through negotiation. I am very glad that we were able to do that because of hard work and a degree of flexibility on both sides of the negotiating table.

We made it clear that the Bill was there for a reason. It was to address the concerns that Northern Ireland was being pulled out of the UK, and that we would have that row with the Commission, if needs be. We did

not want to, but we would be willing to. I hope that that gives an indication of how strongly the UK Government felt about maintaining Northern Ireland's position within the UK.

The reason I said no to a renegotiation is that we got movement from the Commission that for many years the Commission told us was impossible. The starting point from its position was, "The protocol is fine, the UK just needs to get on and fully implement it". Over time, that shifted to, "The application of the protocol is causing some problems, but we can't reopen the text of the protocol. It can only be about implementation". Finally, in the negotiation, we got to the point where the Commission accepted that we had to disapply EU laws and make some really fundamental changes, and those were all things that at the start of the negotiation it said were not going to be possible. We travelled a huge distance with regard to our negotiations. The idea that somehow there was a significantly—or, even subtly—a better deal just over the horizon, I think, is wrong.

I paid tribute to Maroš Šefčovič and his team, and Ursula von der Leyen, for taking what was for them a degree of political risk. Sometimes, we assume that political risk sits only on the UK side of the negotiating table. They made some really bold choices that ultimately have landed on the EU side of things, but that was certainly not a guarantee.

If we reopen negotiations, there is certainly no guarantee that we would get more movement from the EU. It may be entirely feasible that its hinterland would say, "Hang on a second. If you're renegotiating with the Brits, we want you to negotiate this thing back off the table". Both sides of the negotiation have agency.

I genuinely feel that it was the best deal that we could get that was also sellable within the EU. It needs to be sellable within the UK, including Northern Ireland, and needs to be sellable within the EU. This deal is, because we had to be flexible in certain areas for the greater good, which is the preservation of the Belfast/Good Friday agreement and the preservation of Northern Ireland's place in the United Kingdom, and the practical protection of the EU single market. I strongly believe we have achieved all three things.

**Lord Hain:** You have been very clear, for reasons I fully understand and accept, that it is a no to renegotiation. The fact is that a lot of the detail on the implementation of the Windsor Framework, let alone the protocol, still needs to be finalised, formalised and implemented. We had an example, among many, given to us a few weeks ago of a small haulier who had to put only one item that would be classed as red-lane goods in his lorry among 99% of which was green lane, but for that reason the whole lorry had to be stopped and checked. Surely, that kind of thing, along with a lot of others, needs to be sorted out and streamlined, or we are going to be back to square one.

**James Cleverly MP:** That is a good point. It gives me the opportunity to clarify, and I thank you for that.

While I am saying that we are not going to renegotiate the framework, it is quite clear that there are things that need to be done to make sure that the new arrangements are fully understood. They are by their nature, in some areas, complicated, and that complication is because we seek to simultaneously protect the integrity of the European single market, protect the integrity of the UK internal market, and protect the Belfast/Good Friday agreement. That slight juggling act across these three protections means that there is a degree more complexity than ideally any of us would want. Some of that is about doing a proper education and explaining job, and we will do that.

**Lord Hain:** Listening as well, I guess.

**James Cleverly MP:** Absolutely. Where there are practical measures—and this is not about renegotiating the framework—we will listen and make sure those process points, rather than treaty-type points, can be addressed. Some of those may need to be tidied up through domestic legislation, and we envisage that there will be elements of domestic legislation that will be required for that.

I do not know the specific case that you raise. Particularly at the early stages of implementation, you will on occasion find examples like that. Where we can listen, learn and adapt, we will seek to do so.

I will also make the point that we have massively simplified the bureaucracy around east-west trade from GB to NI. We have stripped away a load of that bureaucracy and made it simpler. That is not to say it is perfect, and that is not to say there will not be frustrations at some points. I ran a small business that was entirely digital, entirely UK-based, and did not really export. As someone who ran a small business, I am very conscious—it is one of the reasons why I am a Conservative, perhaps—that well-intentioned bureaucracy puts a cost and time overhead particularly on small businesses that do not have big compliance departments. Where we can find ways of alleviating some of that pressure for small businesses without reopening the negotiations, we will, of course, look to do so.

Q75 **Lord Dodds of Duncairn:** On green and red lanes, we had evidence from a manufacturer just a couple of weeks ago, who said that, basically, most manufacturers in Northern Ireland would put everything through the red lane, just for clarity. We have heard evidence that the green lane is effectively a retail lane for goods that can be guaranteed to stay in Northern Ireland. The green lane is subject to 100% documentary checks and 10% physical checks, and the red lane is subject to full EU checks, even for stuff that stays in Northern Ireland. How does that square with the Prime Minister's statement that any sense of an Irish Sea border has been removed?

**James Cleverly MP:** Where we have sectors where there is real clarity that things are going to stay within Northern Ireland, or where there is clarity that products are going to stay within the UK, we have massively

simplified it and reduced pressures. We have made that commitment by the Prime Minister into, largely, a reality.

The feedback I have had—I would be more than happy to hear examples to the contrary—is that in many instances manufactured goods tend to move quite freely within Northern Ireland and Ireland, within the island of Ireland, and therefore that is why that treatment is the most appropriate. A number of other manufactured goods are largely built to global standards anyway, which makes much of that discussion something of a moot point. I am willing to look at specific examples of where that is not the case.

I remind the committee that Northern Ireland's proximity to the single market and its part of the United Kingdom mean that complete perfection in all instances is not ultimately deliverable, but we have in very large part made good on that promise to eradicate that sea border in Northern Ireland. I am very much willing to listen. If there are opportunities to adapt and alleviate any of those pressures, we will always seek to do so.

**Lord Dodds of Duncairn:** So you are open to changing some of the rules regarding red and green lanes if they are not working out as intended.

**James Cleverly MP:** There are certain things that we are seeking to protect. The Belfast/Good Friday agreement and Northern Ireland's place within the UK are absolutely top priorities for us to protect. If we can learn and adapt within that, of course we will always look to do so. I do not want to go further in implying a commitment to change without understanding a bit more about specific details. I am not a technical expert on these things; I have people who are. I would not want to go further and imply that we can definitely sort out this particular problem without knowing the detail of it.

We are a trading nation. That is in our DNA. The Prime Minister is very committed to economic growth. Economic growth is unlocked by ease of trade and trade facilitation. Where there are options to do so, whether within the UK, between the UK and the EU, or between the UK and more globally, as a default setting we are always going to look at opportunities to ease the flow of trade because it is good for businesses. That means it is good for the Chancellor, and therefore it is good for the provision of public services.

Q76 **Baroness Ritchie of Downpatrick:** Foreign Secretary, you are very welcome to our committee, along with your officials. I will move on to some of the detail concerning the implementation of the framework and the labelling issues that have been presented to us by those within the retail and business sector.

One submission is that labelling—notably new, not-for-EU labelling—requirements have a 1 October 2023 deadline for implementation, some four or five months away. However, in the absence of operational guidance across the supply chain, the October deadline is becoming

increasingly challenging. We had that evidence last week when we listened to representatives from the British Retail Consortium and Retail NI based in Northern Ireland. What is your answer to them? When will those details become available? When will they be supplied to the retailers and those in the industry? Maybe you could give us an explanation of those new labelling requirements for business. What consultation have you and your officials carried out with business about the new requirements? There seems to be some issue with them regarding the dearth of proper consultation.

**James Cleverly MP:** We spoke extensively with retailers in the period when we negotiated the framework. We had lots of conversations about the challenges, particularly east-west for food retailers, although not exclusively. Food retailers were particularly animated about the challenges. I know that there were some real issues affecting GB foodstuffs in the shops of Northern Ireland.

Some friends of mine from Northern Ireland say that shoppers instinctively know where certain products come from, and you can instantly see on the shelves whether there are supply chain issues. If there are challenges east-west, you can see it by which brands are or are not on the shelves in Northern Ireland. We were very focused on that, and we listened extensively to retailers. Not every retailer will agree with every other retailer, but the centre of gravity of the voices that we had was that UK-wide labelling was the preferred option.

There are some advantages and disadvantages to UK-wide labelling, and there are advantages and disadvantages to labelling "only in NI". Part of it is practical and part of it is philosophical. The practical point is that retailers said that they would prefer a UK-wide regime. Philosophically, I keep saying Northern Ireland is part of the UK, so it seems to me logical that for something we are asking Northern Ireland to do we should ask the UK to do. I am very comfortable with having a UK-wide regime. The details of that will be out in due course or shortly, which is a lovely political euphemism.

**Baroness Ritchie of Downpatrick:** I was going to ask you, Foreign Secretary: what do you mean by "in due course"?

**James Cleverly MP:** There is quite a bit of detail in this answer. I am quite happy to share it with you in writing—otherwise, I am going to burn through a load of committee time.

**Baroness Ritchie of Downpatrick:** Maybe you could write to us.

**James Cleverly MP:** Yes.

**The Chair:** If there is more detail, it would be very helpful if you wrote to us so that we can cover some of the rest of the questions that we have.

**James Cleverly MP:** While autumn of this year is the start point, it will be phased through the next couple of years to 2025. We have been talking about this for quite some time, including in the Command Paper in

2021, so it should not really be a surprise to the retail sector. Of course, it will want to have details. I am sure there will be technical questions about size, prominence and that kind of stuff. I will get information about those details to the committee in writing. It is not just a sudden start.

As I said, we have been talking about this for a couple of years, and it will not be fully implemented for another couple of years. I am not a retailer; I do not want to imply simplicity when there might be complexity. This is something we discussed extensively during the negotiations with the retail sector, including those who said that labelling would be a good way of ensuring that their products were available not just in GB but in Northern Ireland.

**Baroness Ritchie of Downpatrick:** What progress has been made between the UK Government and the EU to agree a long-term solution for veterinary medicines before the expiry of the grace period at the end of 2025?

**James Cleverly MP:** Veterinary medicines, I can assure you, are a point of regular conversation between me and Maroš. One of the things that we discuss is the need for certainty and predictability over the long term. This was one example, like a number of others, where the interim measures—the sticking plaster solutions—were okay as far as they went, but really did not provide certainty.

We have a three-year protection, which covers us for the short term and provides some degree of certainty. We recognise that there needs to be a permanent solution. We are not quite there yet—I will be honest with you on that—but this is one of the areas where we continue to work closely with the European Union.

As with the point that Lord Hain made about trust, having a better, more trusting working relationship with each other is the kind of thing that unlocks resolution to issues like this. Risk-based, practically based solutions in what in many instances is a largely globalised market are what I would seek to do. I cannot give you complete clarity and assurances at this point, but we have established a pattern of pragmatism in our negotiations with the EU. While I cannot nail down your answer completely here and now, I am pretty confident we will get to a credible, sustainable solution, because that seems to be the pattern on this and a number of other areas that we have worked on. There is a pattern.

**Baroness Ritchie of Downpatrick:** It might be useful if you or your officials provided us with an update before we complete our report.

**The Chair:** That would be very helpful.

Q77 **Baroness Ritchie of Downpatrick:** I have an additional question on parcel deliveries.

Foreign Secretary, you have very clearly confirmed today that the Windsor Framework is not subject to renegotiation, but to what extent do

the Windsor Framework's arrangements concerning parcel deliveries, plants, seeds, machinery and trees resolve the problems that people encountered in the protocol, and do they leave any issues unresolved?

**James Cleverly MP:** We listened very carefully to the general concerns, particularly of the unionist communities in Northern Ireland, and a number of bodies and representatives put forward quite granular issues that needed to be addressed. We really worked through those things methodically. I have used the example of Jubilee oaks, seed potatoes and certain other plants. Those were very much in my head because I remembered the conversation we had with the lovely family business. We have worked to address those, and we have worked to address the issue on provision of parcels, particularly parcels sent from private individuals to private individuals, to ensure that they were not treated like commercial transactions and that we did not impose a commercial-style bureaucracy on grandparents sending presents to their grandchildren through the post and those kinds of things.

We worked through those issues. As is often the case, there are big lists of things. Where there are still some residual plants—I think there are certain plants that still need to be resolved, the list of which I cannot keep in my head, but I can ensure my officials share it with the committee—we are working through those. We have found that the pattern of behaviour of the EU Commission—Maroš Šefčovič and his team—is pragmatic. Where there can be solutions, it is endeavouring to work towards those solutions rather than making excuses for not providing solutions.

This is some of the ongoing, rather boring procedural work. After the headlines comes the graft, and this is the graft whereby we are working through those issues. If there are genuine insurmountable problems such as why some products cannot be moved, of course we will work on those, but in large part we are moving through what have previously been identified as very sticky sticking points, and we are seeking to resolve them.

**Baroness Ritchie of Downpatrick:** Allied to both of the questions that I put to you is the whole issue of common frameworks, because there is an intersection between common frameworks and the protocol and Windsor Framework. I am also—I would have to declare an interest—a member of the Common Frameworks Scrutiny Committee. What is your view on the impact of the Windsor Framework on the common frameworks process? Maybe that is an area you might like to come back to us on.

**James Cleverly MP:** That is a very broad question, if you do not mind me saying so. I would prefer to give a meaningful written answer rather than an answer that at this stage would have to be quite superficial and in general terms. It would probably be better if I came back with something a bit more detailed and specific, with your leave.

**The Chair:** That would be very helpful.



Q78 **Baroness O’Loan:** Foreign Secretary, welcome to the committee. I apologise for arriving late; I was unavoidably detained.

I want to take you to the amendments to the protocol made by the framework in the context of VAT. When and in what ways will consumers and businesses in Northern Ireland see a benefit from the new VAT flexibilities? When will the Government and the EU deliver on the commitment to explore establishing a specific list of goods that are not subject to EU VAT rules? What use will be made of the UK-EU enhanced co-operation mechanism on VAT under the Windsor Framework specialised committee? Shall we start with the general benefits?

**James Cleverly MP:** This is a classic example of what at the start of these negotiations we were told with great authority was impossible. This actually required legally binding changes to the text of the protocol, which at the start of the negotiation we were told would not happen, yet through good will, hard work and flexibility we managed to get some.

The simple headline benefit is that Northern Ireland will now be on the same headline VAT rate as the rest of the UK, including on alcohol duties and other indirect tax policies that affect the rest of the UK. One of the advantages—and I as a unionist feel very strongly about this—is that Northern Ireland is demonstrably the same as the rest of the UK for VAT purposes. That is an important statement to make. It also means—this is always our go-to example, and it is not an implication of my preferences or interests, or any implied preferences or interests of the good people of Northern Ireland—that the reduction of VAT duties on certain types of alcohol is now universally applicable across the UK. I am very pleased about that, and I am sure others are too.

The other thing, a bit more seriously, is that, as we move towards more sustainable energy generation generally and domestic energy in particular, the tax treatments that we apply to those renewable and energy-saving products are now applicable to the people of Northern Ireland as well as the rest of the people of the UK. Those things are very important.

The other thing—this is a little more ethereal at this stage—is that future decisions on alleviating tax treatments will now be universally applicable. It is not just what is already in the package, but other things that we might seek to do in the future in the UK Government will also have a positive effect on the people of Northern Ireland. I am also reminded by my notes that the second-hand car market will receive support as well.

**Baroness O’Loan:** When do you think we might have a list of goods not subject to EU law? There is a commitment to explore establishing that list of goods. Are you saying that that is under way?

**James Cleverly MP:** We are looking at doing so. I had this conversation with my officials. We certainly would be able to produce an indicative list for you. I would be very cautious in claiming that it was a completely universal list, because there are a number of areas where it depends on circumstances. I will endeavour to get you as complete a list as we are

credibly able to do, notwithstanding the fact that there will be decisions that are currently in train within the Government anyway about what else might happen in the future. The default now is that Northern Ireland will benefit from any future VAT changes that the UK Government will put in place, and that is a massive benefit. We will look to get that done soon. Again, that is a euphemistic phrase.

**Baroness O’Loan:** Is there anything else you want to say about the use of the new UK-EU enhanced co-operation mechanism on VAT?

**James Cleverly MP:** For me, the really important bit is consistency across the whole of the UK. That is the big headline. There are specific benefits and I am very proud of those—but, as a unionist, I am most passionate about avoiding, as far as possible, differential treatment, particularly when the differential is detrimental to Northern Ireland. Northern Ireland was missing out on government initiatives. That differential will now be removed, and that is incredibly important.

Q79 **Baroness O’Loan:** Thank you. I will move on. What will be the legal and practical impact of the Windsor Framework’s provisions on state aid?

**James Cleverly MP:** A really important part of this, which I know has caused concern, is about what has been described as reach-back. We have resolved the subsidy control provision so that it does not, and will not, interfere with Northern Ireland’s place within the UK internal market. As I said, it was always an incredibly powerful principle that underpinned everything we did.

For the EU to claim that there is a risk to it from any subsidy regime that the UK might put in place, the burden of proof is on it to show that there is a genuine and direct link to the Northern Ireland market, and that there has been a subsequent impact on Northern Ireland-EU trade. Again, that principle of Northern Ireland’s place within the UK is at the heart of our thinking, and it pushes the burden on to the EU to prove its case rather than us.

**Baroness O’Loan:** The agreements state that the European Commission and the UK should publish further guidance on state aid and the subsidies that have a material effect for beneficiaries in Northern Ireland, which will be subject to EU state aid rules. Is there work under way to produce that guidance?

**James Cleverly MP:** Yes.

**Baroness O’Loan:** Can you give us any timescale on it?

**The Chair:** “Shortly”.

**James Cleverly MP:** We are working on that, and particularly the circumstances under which Article 10 might be invoked or might apply. I cannot give you a firm date, but we recognise all the areas where, quite rightly, you and others seek clarity. The quicker that clarity comes forward the better for everybody. It gives people time to plan. It also, I

confess, reduces the number of times I get asked awkward questions by committees such as yours about when that report is coming through. I will endeavour to get that to you as soon as we are able to.

**The Chair:** "Shortly" rather than "in due course" would be a great help.

**James Cleverly MP:** "Shortly" better than "eventually", I think.

Q80 **Lord Empey:** Secretary of State, I want to ask you about the commitment to keeping an audit or log of all regulatory divergence between Northern Ireland and Great Britain arising from UK or EU legislation. What steps are the Government taking to manage the consequences of north-south regulatory divergence on the island of Ireland, which the Government Command Paper states is inherent in the new framework? In other words, can there be a central point where somebody can go to see over time how regulations diverge? Would that not be beneficial to business and to everybody?

**James Cleverly MP:** You make a good point. It is one of those things that quite legitimately people will take an interest in. We have committed that the Office for the Internal Market will specifically monitor the impact for Northern Ireland arising from any future regulatory divergence. That will therefore inevitably mean that that body becomes a repository. Northern Ireland authorities can specifically request that the OIM investigates any concerns that it raises. In turn, the UK Government have to provide a full response to any OIM reports requested by Northern Ireland authorities. That will inevitably be the repository and, I suppose, clearing house for any divergence.

**Lord Empey:** More than one government department will be involved, so will there be an obligation to inform that office of divergence rather than it having to pick it up randomly?

**James Cleverly MP:** I am going to have to check whether the process is passive or proactive. I do not want to guess. I envisage that ultimately the OIM will be the repository where there is a duty for government departments to report. As it stands, I would be of the view that requests would come in, they would be logged and held at the OIM.

I am cautious of committing proactive reporting to the OIM because colleagues across government get terribly upset when one Secretary of State commits their department to do a whole load of work without checking on the resource implications thereof, so I would not want to make that hard commitment at this point. That is where I envisage it would sit, and I will check to see whether there is a process for proactive reporting rather than reactive reporting.

**Lord Empey:** I look forward to seeing that, because the committee is looking very closely at it, and we have anxieties that, over time, if a proper log is not kept that businesses and individuals can go and see, it could have economic implications and stand in the way of investment and other things. We look forward to receiving your written answer on that, Secretary of State.

**The Chair:** May I reiterate that last point, Foreign Secretary? The committee has been very concerned from the beginning that somewhere there should be a proper log of regulatory divergence right across the board, and we very much look forward to getting your further advice on that point.

Q81 **Lord Dodds of Duncairn:** I turn to an issue that was highlighted and flagged in the Government's Command Paper when the Windsor Framework was published: the reference to the removal of 1,700 pages of EU law applying to Northern Ireland, which we are told will lead to only 3% of EU law applying to Northern Ireland after the Windsor Framework. This committee has raised that issue previously. The European Scrutiny Committee has raised it on a number of occasions and, indeed, has written a letter recently to try to get answers. Parliamentary Questions have been tabled.

We have received general responses, but can you, Foreign Secretary—I do not expect you to list them all today—commit to providing this committee and Parliament with a comprehensive, full and complete list of all EU laws that comprise the 1,700 pages of EU law referred to in the Command Paper, and to providing this committee with a list of EU laws that remain applicable in Northern Ireland under the Windsor Framework? These are simple, factual questions. This was an issue that was relied on by the Government and by the Prime Minister in whipping up support for the Windsor Framework at the time. We would like simply to have the list. Will you commit to providing that?

**James Cleverly MP:** I looked at the commitment that the Secretary of State for Northern Ireland made. I believe he wrote to Sir William Cash's committee, and I understand that your committee has been given a copy of that letter. I am not going to go further than the commitments that he has made.

I made this point with regard to tax treatments; it is particularly the case with regard to this. Some of those disapplications are circumstantial. In certain circumstances, there will be a disapplication. It is not quite as simple as an A-to-Z list of things.

There has been a very significant disapplication of EU laws when it comes to the Windsor Framework. You are right that we relied on that very heavily, and the reason why we did, as I reminded the committee, was that at the start of this process we were told that these things were not up for negotiation and not up for change. We secured through negotiation very substantial disapplication in a whole load of areas relating to the UK's internal market. In the small number of areas—the modest number of areas—where it still exists, it is specifically because of the inter-relationship between Northern Ireland and Ireland.

On whether we are able to give a pretty comprehensive list of examples of disapplication, the reason I hold short of giving a simple yes is where you say that bit about a "full and complete" list. It is that last little bit that is tricky. We can give a pretty comprehensive list that gives a strong

indication of areas, but there are a number of areas, particularly when it comes to the functioning of the red and green lanes, that would be conditional on certain circumstances, and they are not that easy to put into a list.

I absolutely stand by the very large-scale disapplication of laws for food and drinks, licensing, plant movements, some of the customs bureaucracy around parcels that has already been mentioned, VAT zero-rating, and unfettered access for Northern Ireland firms into the UK market. I can provide a pretty comprehensive list of examples, but I would not want to say, "This is the absolute be-all and end-all", because there will be circumstances where we discover that disapplication happens.

**Lord Dodds of Duncairn:** Foreign Secretary, with respect, I have listened to what you have said, and it is full of generalities and examples, but it was none other than the Government who put in a Command Paper the reference to 1,700 pages. Somebody counted those 1,700 pages—somebody has those 1,700 pages. Why will you not give us the list? Is it the fact that you are afraid to give the list and refuse to publish it, because you are afraid of the criticism that might come forth about those that remain in force across the Northern Ireland economy? What is the only other reason for not publishing it? Surely, your refusal to publish the list only gives rise to the suspicion that you are trying to hide something.

If you decide to make a big thing in trying to sell the Windsor Framework of the disapplication of law, why do you descend into generalities and examples? Why not give us the list? Let us examine it for ourselves so that we can make an assessment of these issues. I fail to understand why you, the Prime Minister, the Secretary of State and various Ministers, in giving answers to Parliamentary Questions, will simply not come clean on the specific issue of a figure and a reference that is made in a Command Paper of His Majesty's Government.

**James Cleverly MP:** The implication of your question is that we have something to hide. Far from it.

**Lord Dodds of Duncairn:** So publish it.

**James Cleverly MP:** I will remind the committee that the starting point was that there were going to be zero pages of disappplied law. That was where we started in the negotiation—zero pages with zero disapplications. What we have accomplished through this negotiation is very significant levels of disapplication across a whole range of areas. The letter that my right honourable friend the Secretary of State for Northern Ireland sent to Sir William's committee gives pages of examples across a whole range of issues.

I remember being told with great certainty at the starting point of this process that it was a fool's errand to try to get any disapplications at all. When we gave that figure of the pages of disapplications, if anything, that was erring on the side of caution, because there will be examples of

disapplications that are based on circumstances that are quite difficult to list, and the explanation of that is in the Secretary of State for Northern Ireland's letter to Sir Bill's committee.

Far from saying that we are embarrassed, the opposite is true. I am very proud of the fact that there are thousands of examples of disapplication—over 1,000 pages just on food and drink. If your starting point is that you think it is short of the 1,700—

**Lord Dodds of Duncairn:** I just want to know what they are.

**James Cleverly MP:** My right honourable friend's letter gives much more detailed examples than I can give in a verbal answer to you today.

The point is that it started at zero, and we have it well up. We should not lose sight of the fact that at the starting point it was zero pages. I am incredibly proud of the fact that we established the principle of disapplication, and then we were able to get such widespread disapplication across a range of areas where people told us, particularly the unionist community in Northern Ireland, that it was having a detrimental impact on their lives, their businesses and their livelihoods. I am very proud of what we achieved, and I think that this is way beyond the expectations of anyone whom we spoke to at the start of the negotiating process.

**Lord Dodds of Duncairn:** Lord Chair, we will keep trying.

**The Chair:** I have no doubt.

Q82 **Lord Thomas of Gresford:** The starkest difference between the EU interpretation and the UK interpretation of the framework is in relation to the Court of Justice of the European Union, because the EU has said there is no change to the role of the Court of Justice, and that the Court of Justice remains the sole and ultimate arbiter of EU law. The UK Government say that there have been changes; that the UK's veto in the Joint Committee can only be challenged through independent arbitration mechanisms and not the ECJ, removing the ultimate authority of the ECJ in areas in which it would affect day-to-day lives. On the one hand, there is no change, and, on the other hand, the UK side, we got rid of the ECJ. What change will be made to the Court of Justice of the European Union's role under the framework?

**James Cleverly MP:** I do not want my answer to appear confrontational, but in your question you have blended two fundamentally different issues. The PM has recognised that when it comes to EU law the CJEU is the ultimate arbiter of its law. When it comes to the issue that is often discussed, which is the application of the Stormont brake, that will be done by international arbitration in the same way as trade disputes are often resolved anywhere around the world, and they are fundamentally different things.

The EU's body and the EU's legal structure do the EU stuff, just as the UK legal process deals with purely UK stuff. As to the area on that Venn

diagram where there is crossover and the Stormont brake is applied, international arbitration will be applied to that. The EU does not deal with UK stuff; UK law does not deal with EU stuff; and where there is a crossover that will be done internationally.

**Lord Thomas of Gresford:** The arbitration mechanisms that are in the withdrawal agreement are always subject to the caveat that, if a point of European law arises, the arbitrators will submit that to the European Court of Justice. Is there any change in that?

**James Cleverly MP:** Yes, but that is different from the ECJ being the arbiter. Case law and examples can be derived in international arbitration from any one of a number of places. I am not a lawyer, but my understanding is that that is not unusual. That is not the same as the ECJ being the arbiter.

**Lord Thomas of Gresford:** No, I understand. The arbitrators are the arbitrators, and the arbitration will be governed by any ruling that the European court will make on European law. That is the position, is it not?

**James Cleverly MP:** That is not my understanding. The arbiters can take points of international law in their arbitration. I am perhaps drifting into an area that I do not claim to be my area of expertise, which is international trade and arbitration. It is not my understanding—I am very willing to be corrected—that an ECJ decision automatically directs the decision of an international arbitration.

**Lord Thomas of Gresford:** Let me take another point. You referred when we discussed state aid to the burden of proof on the European Union to establish whether any breaches of state aid European rules occur. A confrontation like that would obviously be settled in the European Court of Justice, would it not? If the EU says EU state aid rules, so far as they apply to Northern Ireland, have been violated, that would be decided in the European court.

**James Cleverly MP:** If the Stormont brake—

**Lord Thomas of Gresford:** It has nothing to do with the Stormont brake; I am talking about state aid, where you said the burden of proof would be on the European Union to establish that there had been a breach of state aid rules. That could be done only in the European court, could it not?

**James Cleverly MP:** That is not my reading of it, but I am willing to—

**Lord Thomas of Gresford:** What court would decide?

**James Cleverly MP:** If we go into international arbitration—

**Lord Thomas of Gresford:** No, this is not arbitration; this is a breach of state aid rules, where you said the burden of proof would be on the EU to prove it. To prove it before whom? It has to be the European court.

**James Cleverly MP:** It is entirely feasible that I am misunderstanding the nature of the question. The definition of EU laws, as I said and we have always said, is decided by the ECJ.

**Lord Thomas of Gresford:** Yes.

**James Cleverly MP:** If an application has a detrimental impact—the divergence—that is an example where the brake might be utilised, and in that instance the decision will not be made by the ECJ. While you are right that the definition of EU state aid rules will be made by the ECJ—I am willing to double-check my notes and confirm this if I am drifting off beam—my understanding is that if any application were to be having a real-world and detrimental effect on Northern Ireland, that is a circumstance under which the brake might be applied. If the brake is applied, that takes it outwith the jurisdiction of the ECJ. That is why I made the point about the brake.

**Lord Thomas of Gresford:** The impression that has been given is that the Windsor Framework abolishes the jurisdiction of the European court in important respects.

**James Cleverly MP:** I am not sure that is what we have ever said.

**Lord Thomas of Gresford:** That is what the European Commission thinks of it.

**James Cleverly MP:** We have never said that.

**Lord Thomas of Gresford:** You have sold it on the basis that the ECJ is overruled by the Windsor Framework—“It doesn’t apply, forget about it”.

**James Cleverly MP:** No, I do not believe we have said that, sir. We have said that the elected representatives through Stormont and through the Stormont brake will ultimately have a meaningful say on anything that affects them. If there are decisions that the people of Northern Ireland and their elected representatives are very happy with and they do not apply the Stormont brake, it is a moot point. We have never claimed that the ECJ does not have jurisdiction over EU law. We have said that there are a small number of examples where EU law may still have effect in Northern Ireland because of our desire to maintain both the north-south and the east-west relationship—within the UK and between Northern Ireland and Ireland.

We have said that if that balancing act is causing real problems in Northern Ireland there is a Stormont brake whereby we can address those. We have never claimed that we have abolished these things, as you implied in your question. There has been nothing that has come from the UK Government. If that is people’s interpretation, that is not what we have said. The ability for the elected representatives of Northern Ireland to apply a brake is the key element, and once that is applied—

**Lord Thomas of Gresford:** You made it clear that the EU is perfectly right when it says that there is no change to the jurisdiction of the



European court.

**James Cleverly MP:** When it comes to EU law, absolutely.

Q83 **Lord Thomas of Gresford:** Thank you. May I move on to another topic: the engagement of Northern Ireland's stakeholders in decisions of European law before they are made? This is the role of the joint consultative working group, is it not? You have set up certain sub-committees of the joint consultative working group. How far have you got with that mechanism to enable stakeholders in Northern Ireland to play a part in the formation of law? The problem with the Stormont brake is that it is saying no after laws have been made, but what we are concerned with is making the law in the first place. How far have you got with the joint consultative working group and the sub-committees?

**James Cleverly MP:** The specialised committee of that working group on the Windsor Framework has already met. It was chaired by Mark. That is to review the progress and the creation of the structured sub-groups. As I said in response to an earlier question, just as it is not for the EU to dictate UK laws, it is not for the UK to dictate EU laws. Obviously, we would want to feed in the thoughts and opinions of the people of Northern Ireland, both through Stormont and through the JCWG, to help inform the decisions as they could have an effect on Northern Ireland. We wanted to protect the ability for Northern Ireland easily to transact business with Ireland, and therefore by extension with the wider EU. It is not for the UK to dictate to another law-making body about its laws.

**Lord Thomas of Gresford:** How is the group to operate? Is it to contain civil servants from Northern Ireland, who know what they are talking about, or will it hold hearings at which stakeholders can give evidence about what they think of a proposal by the EU to bring in a new directive or whatever?

**James Cleverly MP:** Form follows function. It should be quite Bauhaus in its design. I do not think there is any incentive for us to be prescriptive or limiting on the composition of the sub-groups.

**Lord Thomas of Gresford:** What does that mean—that Northern Ireland people will take part, or will not?

**James Cleverly MP:** They will. They will take part either through their business representative groups or their elected representatives. The point is that these groups are designed to harvest the experience and the views of the people of Northern Ireland. That is why they exist. They are designed to make sure that there is a structured and credible way of feeding views, ideas and concerns into the decision-makers on EU law.

**Lord Thomas of Gresford:** That is exactly it. I am asking about the structure. What is the structure?

**James Cleverly MP:** Form follows function. The structure will be what we view to be the most effective way of harvesting those views and translating them. Rather than saying, "It has to be like this", we are

saying, "It has to perform this", and, "Form follows function". The committee that Mark chaired looked at the best way of harvesting the views of political representatives, business representatives and community representatives in order to most effectively feed—

**Lord Thomas of Gresford:** No final decision has been made about such a structure.

**James Cleverly MP:** No, because we want to make sure it is effective. I would prefer to be flexible in its structure in order to protect its effectiveness rather than be dogmatic and, in doing so, undermine its effectiveness.

**Lord Thomas of Gresford:** Will this committee be informed about the proposed structure before it is finalised?

**James Cleverly MP:** I would think that is inevitable, yes.

**The Chair:** Thank you very much, Foreign Secretary. There is one question that we were going to ask, but we have now run out of time. It would be very helpful if you wrote to us. It is about the implications of the Windsor Framework for the wider UK-EU relationship, and in particular what areas of co-operation can now be accelerated given that there is agreement on the Windsor Framework. That would be very helpful.

There are one or two other pieces of work that you have very helpfully said you would be able to write to us about. One was in answer to questions from Baroness Ritchie about plants and the link with common frameworks. You have also agreed to write to us about the list of goods not subject to EU VAT, and about the role of the OIM on divergence. I know that that is very much a concern of the committee as a whole. Finally, I think you promised to send us a "pretty comprehensive" list of the 1,700 pages of EU law, and that would be very helpful, too.

On behalf of all of us, may I thank you and your officials for the evidence you have given? We are one or two minutes over the hard deadline of 1.15 pm, but we are very grateful to you for coming and giving evidence to us.