

Protocol on Ireland/Northern Ireland Sub-Committee

Corrected oral evidence: Windsor Framework implementation: follow-up

Wednesday 25 October 2023

3.15 pm

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

Evidence Session No. 2

Heard in Public

Questions 17 - 30

Witnesses

I: Rt Hon Chris Heaton-Harris MP, Secretary of State for Northern Ireland; William Gelling, Director, Political, Northern Ireland Office; Brendan Threlfall, Director-General of Union and Windsor Framework, Cabinet Office; Lord Caine, Parliamentary Under-Secretary for Northern Ireland, Northern Ireland Office.

Examination of witnesses

Chris Heaton-Harris MP, William Gelling, Brendan Threlfall and Lord Caine.

Q17 **The Chair:** We are holding this evidence session today with the Secretary of State for Northern Ireland as part of our work on the implementation of the Windsor Framework. You are extremely welcome, Secretary of State. We also welcome Jonathan Caine, Parliamentary Under-Secretary at the Northern Ireland Office and a distinguished former member of this committee; Brendan Threlfall, director-general responsible for the Windsor Framework at the Cabinet Office; and William Gelling, political director at the Northern Ireland Office. We are very grateful to all four of you for being with us today.

Today's meeting is being broadcast and a verbatim transcript will be taken for subsequent publication, which will be sent to you to check for accuracy. I should also refer to the list of Members' interests, published on the committee's website. We know you have a busy schedule today and a flight to catch at the end of this meeting. We will aim to end the

session promptly at 4.45 pm, but if you need to go before that for flight reasons, I am sure you will let us know.

Welcome once again to all of you. I will ask the first question. How would you characterise the overall impact of the Windsor Framework on political stability in Northern Ireland?

Chris Heaton-Harris MP: Thank you, Lord Jay and the committee. It is a pleasure to be here. I apologise for being unable to come to a previously scheduled committee meeting for reasons that I gave at the time, but it is a pleasure to be here. I am fully aware—Lord Caine has advised me—of the wealth of experience of the members of this committee, from former Secretaries of State to former executives, who have a lot more knowledge about Northern Ireland than I will ever have. I am very pleased to have Lord Caine with me to help me out because, as you all know, his knowledge of this subject and the history and political affairs of Northern Ireland is quite outstanding.

The Windsor Framework delivers stability for the people of Northern Ireland. It protects Northern Ireland's place in the union and preserves the balance of the Belfast/Good Friday agreement. It also provides the Northern Ireland Executive with a powerful say via the Stormont brake, which Parliament overwhelmingly approved in March this year. Intensive work is ongoing with Northern Ireland parties, including the Democratic Unionist Party, to finalise the conditions in which we can restore the devolved institutions.

The Chair: Thank you for that answer. You have wrapped up in a few words a number of the issues that we will come to in the discussion as it progresses. Lord Dodds will ask the next question.

Q18 **Lord Dodds of Duncairn:** Thank you, Chair, and thank you, Secretary of State, for being here. I apologise that I cannot be in the meeting in person, but I am grateful for the opportunity to participate. Can you tell us about progress on resolving some of the issues that are of particular concern to the unionist community, particularly in relation to the legislation you are working on? Does the legislation alter the terms of the Windsor Framework? Can you tell us whether you are in negotiations with the European Union at any level about changes either to the substance of the framework or its operation?

Chris Heaton-Harris MP: I am afraid that Lord Dodds will be unhappy with my answer because I will not comment in public about any ongoing talks. When we got the Windsor Framework over the line with the European Union, those talks were conducted on a confidential basis. That was how they came to a positive fruition. Likewise, we are in talks at this point in time and I simply will not comment on the content of those talks.

Lord Dodds of Duncairn: That is helpful, as ever; we will get some answers along the way. To follow up a specific point, in March the *Belfast Telegraph* asked you a question about whether a gardener, a private individual in Northern Ireland, could go online and buy a cherry or dogwood tree from Great Britain. You replied, "I'm a lover of one-word

answers ... yes, it's going to be straightforward ... there's no more to it, no less to it than that". Can you, in front of a parliamentary inquiry and Select Committee, stand over those comments?

Chris Heaton-Harris MP: On the bans lifted so far on high-risk plants, I refer the noble Lord to what the Prime Minister said when he introduced the Windsor Framework back in February. We have introduced the Northern Ireland plant health label, which has ended restrictions that hampered consumer choice and damaged business. That means that plants and products such as seed potatoes can once more move easily within the United Kingdom, and it removes the burden on businesses by removing the requirement for phytosanitary certificates. It came into force on 1 October, ending those restrictions.

The scheme closely aligns with the current UK plant passport regime, making it familiar and accessible to all businesses engaged in the commercial movement of plants. It reduces the burden on businesses by removing the requirement for phytosanitary certificates. The ban is also lifted on high-risk plants. Two were lifted within the Windsor Framework: the wax-leaf privet and the delavay privet. As the Prime Minister said, and as I have said in discussions that have happened since, there has been resolution on hawthorn; apple—*malus domestica*; crab apple; Norway maple; Japanese maple; Singapore maple; and red maple. Those expected to be resolved shortly include the English oak, European beech and sessile oak. As the Prime Minister said in February, we have tried to tackle the species that have the highest value on the market. These are complicated talks in which my colleague Mr Threlfall has the pleasure of engaging with others on the other side of the fence.

Lord Dodds of Duncairn: With respect, Secretary of State, I asked you about online shopping by private individuals in Northern Ireland. You have read out a whole list of things that are extraneous to that question. Do you stand over what you stated—that online and mail order shopping by consumers in Northern Ireland who are private individuals is possible under the Windsor Framework? Are you saying that is possible, or would you like to take the opportunity to correct the record and apologise?

Chris Heaton-Harris MP: As the noble Lord knows, the elements to do with parcels—

Lord Dodds of Duncairn: I am not asking about parcels; I am asking about plants.

Chris Heaton-Harris MP: That is exactly how these goods would travel into Northern Ireland. Parcels will come next time. As I said, currently, things such as seed potatoes can travel with a plant health label, and these seasonal—

Lord Dodds of Duncairn: Is it legal and possible for consumers to purchase plants and seeds online, as you asserted previously?

Chris Heaton-Harris MP: When the parcel stuff comes in—

Lord Dodds of Duncairn: Your refusal to answer—

The Chair: The witness must be allowed to complete his answers.

Chris Heaton-Harris MP: I was going to turn to Mr Threlfall. Perhaps he could back-fill my answer if I have got it wrong.

Brendan Threlfall: Is it legal? Yes, it is for everything where a ban has been lifted. As the Secretary of State said, that applies to seed potatoes now and it applies to the eight bans we have already lifted on high-risk trees. There is an additional question beyond that, which Lord Dodds may also be referencing: if it is legal, what are the potential processes that come with online ordering? As the Secretary of State said, there is a need to resolve some of that ahead of next October, because that is the point at which customs declarations currently apply, if you are ordering online some of these products. It will be legal to order them where the ban has been lifted. It is not correct to say that it is illegal to order them, but the high-risk tree would need to come in with a customs declaration, which obviously could be a disincentive to the movement. That will be lifted only from next autumn.

The Chair: Thank you. I think that covers that point.

Q19 **Baroness O'Loan:** Secretary of State, in relation to the current political situation in Northern Ireland, have the Government also been engaging nationalists and others on issues relating to the Windsor Framework?

Chris Heaton-Harris MP: The short answer is yes. I talk quite regularly to all the main party leaders about not just the Windsor Framework but a whole range of other issues that you could say transpire from not having a functioning Executive at the moment. I have regular conversations with them all.

Baroness O'Loan: I suppose we will pick up what might be the substance of those conversations in the questions that follow. You said that you have regular conversations on the issues that have been raised with us in the context of our published reports. Are these the issues that you are discussing with them? I am not asking you to discuss the constitutional issue.

Chris Heaton-Harris MP: It depends, because I have quite regular conversations with party leaders and MLAs from individual parties. Any number of themes has come from that. The main one is about getting the Executive back up and running and what it might take to do so. I have received papers from the Alliance Party and I believe the SDLP sent me a paper about its views on whether things need to be reformed as we move forward to stop an impasse happening again. Certainly, Naomi Long, leader of the Alliance Party, has been keenly engaging and sending me lots of information about that. I have promised to have a much fuller conversation with her and her party on those matters as we move forward. Unfortunately, back in February there was the shooting of DCI Caldwell, so there was a set of unique conversations about the security situation in Northern Ireland, but the themes tend to be around Executive

reformation, the Northern Ireland budget, public services and, in some cases, reform.

Baroness O’Loan: Apart from the exchange of correspondence and papers, when was the last meeting with the various parties on issues relating to the Windsor Framework?

Chris Heaton-Harris MP: On issues relating to the Windsor Framework, my last conversation with Michelle O’Neill from Sinn Féin, for example, was last week. My last conversation with Colum Eastwood was downstairs a bit earlier today; with Doug Beattie of the Ulster Unionist Party it was in early October; and with Jeffrey Donaldson it was probably last Friday.

Baroness O’Loan: Thank you.

The Chair: I think we get the point in the pattern.

Q20 **Baroness Goudie:** In what ways does the Windsor Framework meet the UK’s and EU’s joint commitment to protect the Belfast/Good Friday agreement, “including its subsequent implementation agreements and arrangements, in all its dimensions and in all its strands”? As a supplementary to that, in your assessment, have the Government’s attempts so far to manage the implications of Brexit for Northern Ireland had a positive or negative impact on the Belfast/Good Friday agreement?

Chris Heaton-Harris MP: Thank you very much for the question. Everyone on this committee and on this panel understands that the UK Government have long recognised the need to take account of Northern Ireland’s unique circumstances and to protect all dimensions of the Belfast/Good Friday agreement. However, following our departure from the European Union, I believe the Northern Ireland protocol was signed in good faith and both sides believed it would solve a number of the issues that had been created by our departure, but it very quickly became clear that the old protocol did not strike the right balance and Northern Ireland has experienced persistent social, political and economic difficulties arising from its impact, the main one being that it stopped the smooth flow of trade between Great Britain and Northern Ireland with unnecessary red tape.

I have spoken to many members of loyalist and unionist communities and politicians who essentially were able to demonstrate to me that this was manifested by goods that previously came from Great Britain not being on their shelves. These goods were replaced by those that came via the EU single market. That was a demonstration to them that they were being drawn inadvertently into the European single market’s orbit and taken out of the United Kingdom’s internal market, and that needed to change. That was why the Prime Minister set so much store by trying to get an agreement, the Windsor Framework, over the line to rectify the practical problems that flowed from these issues.

We and successive Governments have always made it clear that we want to negotiate to find proper solutions. I welcome the committee’s recognition that the Windsor Framework has provided an agreed

consensual basis for progress in Northern Ireland. It is a set of joint UK-EU solutions to move past the difficulties that have arisen from the operation of the old protocol. It is much more durable than the grace periods or any contingency measure agreed or that we took unilaterally, and it marked the start of a new and much more positive chapter in our relationship with the European Union as partners.

Since then, as you will have seen, we have announced a bespoke new arrangement with the European Union on Horizon Europe, the world's largest research collaboration programme, delivering a deal that is in the best interests of the United Kingdom. We would like to think it addresses the underlying issues that contributed to that perception and dealt with the practical issues of goods disappearing from shelves in Northern Ireland.

Some 4,150 companies used the old trader scheme through which people could register to send goods to Northern Ireland from Great Britain. Nearly 7,000 companies have now registered for the UK internal market scheme that has replaced it. Practically, the first phase of the Windsor Framework came into operation on 1 October and goods are flowing smoothly into Northern Ireland from Great Britain. New retailers are using the freedoms and facilitations that the Windsor Framework has brought.

Lord Caine: Baroness Goudie, I will jump in here to reinforce what the Secretary of State said and allow him to draw breath for a moment. As you mentioned the Belfast agreement, it is worth putting on record—it can never be stated enough—that this Government remain steadfastly committed to that agreement in all its parts. As far as we are concerned, it is the foundation of all the progress that has been made in Northern Ireland over the past quarter of a century, and its protection, preservation, strengthening and implementation underpin everything we do as a Government in Northern Ireland. As the Secretary of State quite rightly pointed out, the irony is that the old protocol was designed to protect the agreement in all its parts but had the unintended consequence of undermining the agreement. That is what the Windsor Framework is intended to rectify, and we are confident that it does.

Baroness Goudie: Thank you very much for clarifying that point; it is really important.

Baroness O'Loan: Secretary of State, would you agree that the increase in the number of those on what I think was the trusted trader scheme, from 4,000 or so to 7,000, is the product of the fact that the new scheme is open to more businesses than the trusted trader scheme was? I also place on record the fact that there are still major difficulties in getting products into Northern Ireland. I am not asking a question; I am just telling you there is still a problem.

Chris Heaton-Harris MP: I appreciate the fact that more businesses are using what is a relatively straightforward mechanism. The wholesaler Booker has written to lots of its clients to say that goods that were

previously not available under the protocol can now be available under the Windsor Framework, and lots of other businesses have noticed the opportunities. On top of this, the committee will not have missed the fact that businesses have seen the opportunities that flow from the Windsor Framework and the constitutional position in which it puts Northern Ireland: it is able to supply goods to the European single market on an unfettered basis as well as the United Kingdom's internal market, and benefit from the trade deals we might do around the world.

Only last month we hosted an investment summit with the Department for Business and Trade where over 180 different businesses were represented—some from different parts of the world that had never been to Northern Ireland—because they saw the opportunities. Today, the US special economic envoy to Northern Ireland, Joe Kennedy III, has a group of 50-plus businesspeople from the States in Northern Ireland. Businesses are recognising the opportunities. As you described in your question, a whole combination of different things is coming together that makes it a very positive proposition to invest and do business in Northern Ireland.

Lord Caine: The New York State Comptroller, Tom DiNapoli, yesterday announced a \$50 million investment in Northern Ireland through pension funds, which is really positive. I was in Boston and New York three or four weeks ago, where I did a couple of investment events. The sentiment about doing business in Northern Ireland at those events was 100% positive. The best advocates for Northern Ireland are those who have put their money where their mouth is and invested there. In the vast majority of cases, they cannot speak highly enough of NI as a place for investment and how pleased they are with the decisions they have taken.

Baroness O'Loan: Excellent, thank you.

Q21 **Baroness Ritchie of Downpatrick:** Secretary of State, you have already made reference to UK-EU relations, but can you expand on that in the context of the Windsor Framework? How would you characterise the current and ongoing state of UK-EU and UK-Irish relations? Further, what recent discussions have been held with the Irish Government, in particular the Tánaiste and Minister for Foreign Affairs, Micheál Martin, regarding the north/south and east-west requirements of the Windsor Framework, particularly given the lack of political institutions? As a former member of them I want to see those institutions up and running because I believe that is the best way to deliver for the people of Northern Ireland, but, given that we do not have a North/South Ministerial Council, who actually delivers on the Windsor Framework in terms of north-south relations?

Chris Heaton-Harris MP: Thank you very much for the questions and your ongoing interest. I believe you have come to some events where I have been present with the Tánaiste. We engage quite regularly. Since I became Secretary of State, we have really tried to make the British-Irish relationship work properly for the benefit of both countries and to make sure that our relationships are as they should be. That means taking

British-Irish Intergovernmental Conferences seriously, and we have added items to the agenda of mutual interest, one of the latest being energy co-operation. The Prime Minister also takes these issues seriously. He is the first Prime Minister for 15 years to turn up at a British-Irish Council. We are doing everything both in deed and word to demonstrate that we want a permanently strong, friendly relationship with Ireland, because we know that is the best thing for both countries.

It is no surprise that the Tánaiste tells me regularly in our off-mike bilaterals and conversations that he really wants to see the Executive up and running, because he would like to see Ministers appointed to those north-south bodies so they can do their work as per. Along with my officials and Ministers, I am avidly working to try to get the institutions up and running because we too would like them to work. In the meantime, we have a whole host of interactions at official level in other places. I will bring in Mr Gelling on this so that we can make proof points for you that we are taking this seriously and trying to do what we can in the meantime.

William Gelling: I will quickly add two points. First, at official level we have made a point over the past year of making sure that we touch base with our Irish opposite numbers in Dublin every week, to aim to have no surprises where there are appropriate issues for discussion between the two Governments. Secondly, on the specific issue of the North/South Ministerial Council, I was in Omagh yesterday, so we are absolutely apprised of the issues they are facing at the moment. It is part of the NIO's policy work to work out how we can help solve those and bring the Executive back in the coming couple of months.

Baroness Ritchie of Downpatrick: When is the next meeting of the British-Irish Intergovernmental Conference, which will deal with British-Irish issues? Further to that, regarding the NSMC, is there an execution of the north/south issues in relation to the Windsor Framework?

Chris Heaton-Harris MP: The BIIGC will next meet in three or four weeks, in Dublin.

William Gelling: To be clear, there are two sets of issues. If the Executive are restored, our hope is that a lot of north/south ministerial issues will be resolved on their own merit. If that is not resolved immediately, clearly, we will need to find a way to help the NSMC with some issues, including board member appointments and others.

Baroness Ritchie of Downpatrick: Would that be part of plan B?

William Gelling: I will leave the Secretary of State to talk about that.

Chris Heaton-Harris MP: I refuse to let people talk about plan B, because plan A is getting the Executive back up and running and I am fully on that, but if the Executive do not get up and running, things will have to evolve to allow other things to move on. I hope that that is a theoretical point that I will never have to put into practice.

Baroness Ritchie of Downpatrick: Thank you, Secretary of State.

Q22 **The Chair:** I have a question about the economic impact of the protocol and the Windsor Framework on Northern Ireland so far. You and Lord Caine have already answered questions about the conference, for which many thanks. Can you say a bit about what you see as the impact of the protocol on economic relations between Northern Ireland and Great Britain on the one hand and Northern Ireland and Ireland on the other?

Chris Heaton-Harris MP: I will turn to Mr Threlfall in a moment to see whether any statistics are available yet, but do remember that, realistically, it came into operation only on 1 October. Certainly, at individual meetings I have had with businesses and at the investment summit, lots of people were unbelievably positive about future investments. There are more people taking goods into Northern Ireland using the facilitations that we have available from Great Britain, but I have not seen any measurable statistics on this; it might be too early for those.

Brendan Threlfall: I do not think there is any specific macro data we can point to. Even when there is, there are obvious difficulties in trying to disaggregate causes of the data. As a general point, it is true to say that Northern Ireland's manufacturing and agri-food sectors are both performing strongly, despite the fact that there are strong global headwinds in manufacturing. Even in the past couple of weeks we have seen some positive investments, such as Almac in pharmaceuticals or Coca-Cola, in the types of jobs and contributions that should in principle benefit from dual-market access.

Lord Caine: To go back to the point I made earlier about my conversations in the States, it will not surprise the committee to hear the particular interest and enthusiasm derived from the fact that Northern Ireland has a unique status now whereby it has privileged access to the EU single market and unfettered access to the United Kingdom internal market. That is a very strong selling point with businesses in the States.

The Chair: Thank you. Secretary of State, you were looking agog as though you were about to say something.

Chris Heaton-Harris MP: I have just realised that the date of the next British-Irish Intergovernmental Conference is my birthday, which is 28 November.

Lord Hain: You will be expecting a big cake.

Chris Heaton-Harris MP: A cake would be nice.

Q23 **Baroness Ritchie of Downpatrick:** Happy birthday in advance, Secretary of State. Since it will be in Dublin, I hope you get a proper happy birthday.

Since the beginning of the committee's work, we have taken substantial evidence on the issue of veterinary medicines. In fact, the evidence

received, which was in our last report published some months ago, illustrated the fact that, while the issue was offside until the end of 2025, those in the veterinary and farming sectors, particularly the Ulster Farmers Union, would still like to see a solution. In fact, I tabled a Written Question to Lord Benyon on this issue, but I thought I was getting a shove-off, as he basically did not answer the question. So I ask you, Secretary of State: can you provide us with an update on progress on the issues of veterinary medicine?

What is your view on the various proposed solutions put forward by industry stakeholders such as the UFU and others, including on the issues of the UK-EU sanitary and phytosanitary agreement? Are the Government working towards agreeing an SPS agreement with the EU? Is there an update on cattle movements from Scotland to Northern Ireland, an issue that has been raised directly with the UK Government by the Ulster Farmers Union and by me? I have been in written correspondence with DAERA about that and was told that there could be a possible solution in the autumn. Perhaps you are in a position to advise the committee.

Chris Heaton-Harris MP: As I did earlier today when this came up, I will hand over to Mr Threlfall in a moment, because the conversations and the gathering of evidence are being done through his unit. In a straightforward sense, while the extension of the grace period until 2025 for veterinary medicines is welcome, our position remains clear: there needs to be a long-term and permanent solution that maintains the uninterrupted flow of veterinary medicines into Northern Ireland from Great Britain, on which so many people and businesses rely.

I know that there have been a large number of conversations to gather the evidence on both the breadth of the market and the asks of the Ulster Farmers Union and others in this space. We are keen to get this matter sorted in an appropriate way and believe we can because we believe our relationship with the European Union is such that we can talk and negotiate on these issues at appropriate times. We managed to do that on pharma goods for humans in the course of the Windsor Framework. The grace period at that point had just been negotiated to the end of 2025. It is fair to say that it was agreed on all sides—or it was put to one side because there was a lot of work going on in other areas. We understand the importance of this matter, and I hope Mr Threlfall can add some colour to that discussion.

Baroness Ritchie of Downpatrick: Thank you.

Brendan Threlfall: As the Secretary of State said, we are engaging with industry a lot on veterinary medicines. We will need a bespoke solution that is not exactly the same as the human medicines one; I do not think we can take that off the shelf and try to apply it because of the distinct nuances on veterinary medicines. We are working with industry to try to make sure that we have fine-tuned what we think is a solution that works for Northern Ireland from all perspectives. It needs to maintain the flow of veterinary medicines from GB to NI, not have any negative market access implications for Northern Ireland's agri-food industry and support

the one—at least—significant producer of veterinary medicines based in Northern Ireland. We need to cover all three bases in the solution.

I have discussed the livestock issue with the Ulster Farmers Union. It is being dealt with at the chief vet level in DEFRA. We are working on a potential solution, including the specific auction marts in Scotland where there have been known problems. We have not yet finalised a solution, but we are very focused on that.

Baroness Ritchie of Downpatrick: Do you have any guesstimate of a possible date or time span for solutions?

Brendan Threlfall: It is hard to give a timetable. In the last few weeks we have escalated it internally in terms of how much weight we are putting behind it, so we hope to resolve it relatively soon.

Baroness Ritchie of Downpatrick: Thank you.

Q24 **Lord Empey:** Good afternoon, Secretary of State. I have a question about divergence, and with the Chair's permission I might ask a supplementary. Why will the Government not commit to keeping an audit or log of all regulatory divergence between Northern Ireland and Great Britain arising from UK or EU legislation? It seems a fairly basic thing to do.

Chris Heaton-Harris MP: There are two points to this question. Forgive me, Lord Empey, if I make a very political point at the start. While this is a very important question, the type of divergence that I know most people in Northern Ireland are concerned about is the divergence in the quality of outcomes from the health service in Northern Ireland—now without an Executive—being reformed compared with England, Scotland and Wales, and the divergence that is beginning to occur in education and a whole host of other areas, answers to which should be found by an elected Executive in that space. That real divergence is going on and it affects everybody in Northern Ireland.

Looking first at the high level, if you like, of the Windsor Framework, it preserves unfettered access for Northern Ireland businesses to sell to their “most important” market, which is Great Britain, while maintaining their privileged access to the whole of the EU market. This will apply regardless of any regulatory divergence between Great Britain and Northern Ireland, “ensuring a unique set of opportunities” for Northern Ireland.

The framework also takes the steps necessary to ensure the smooth flow of trade from Great Britain to Northern Ireland. The application of UK food and drink safety standards in the agri-food retail green lane, for instance, is an important protection to ensure that the same goods are on the shelves in Northern Ireland supermarkets as in Great Britain. That is an unbelievably important point that I tried to make earlier. A solution on medicines, in a similar vein, ensures that medicines are authorised by the MHRA for the whole UK. So divergence in those areas should not cause concern.

Northern Ireland producers and manufacturers have made it clear that they value very much the EU and UK access, and many, such as the dairy sector, operate on an integrated island of Ireland basis. Businesses made it very clear that full dual regulation would not work for them and would risk a border on the island of Ireland. In finding the solution, we have listened to industry and protected the vital supply chains that rely on north-south trade.

New mechanisms are set out in the Windsor Framework for the UK and the European Union to discuss solutions to any divergence issues that may arise. Government departments will continue to work together to log and analyse information, identify issues and, where necessary, raise them with the European Union in the joint fora I mentioned a moment ago, which will be considered as part of wider policy decision-making in government, and will be able to flag issues to what I hope will be a re-formed Executive, which will have the ability to use the Stormont brake on future elements of legislation.

Lord Empey: With respect, Secretary of State, you are answering a question I have not asked. With regard to education and health, you are talking to the converted. I have no issue with that. The point is that we just talked a moment ago about American investment and so on, which is something very dear to my heart, but, equally, we as a committee, month after month, week after week, get regulations coming forward that will apply to Northern Ireland but do not apply to Great Britain. Therefore, would it not be sensible from an investment point of view to have a simple, single point of contact where potential investors or anybody else could go, to look and see what the differences actually are? Over time, the European Union regulatory environment could change quite dramatically, and we would be affected. Surely, there needs to be a single point where you can look up what those differences are.

Chris Heaton-Harris MP: Yes, sorry, I went on too long on the first part of my question, Lord Empey, and probably not long enough on the second. First, when it comes to future divergence on matters that affect goods in Northern Ireland, there is the Stormont brake. Obviously, that can be pulled only by 30 MLAs in an Assembly that is sitting. As the UK Government, we would try to ensure and help facilitate knowledge—in politics, let us say—of where divergence might be happening to help that kind of scrutiny mechanism in the Assembly. Essentially, I would probably point to the GOV.UK website, but that is a really facile answer because it needs a bit more depth on it. This is only just starting and it is only just about to happen.

We are looking at how we can manage the information that we give out to businesses through trade groups, the constant discussions that we have with the trade bodies and a whole host of other groups, and indeed online. So the information that you are talking about is available. As anybody on this committee will know from looking at the Explanatory Memoranda that come up, trying to put it into a business and UK citizen-

friendly form so that it is searchable and easy to access and understand is slightly more difficult than just putting it on a website.

Lord Empey: I was not getting into anything to do with the Stormont brake; I am talking about a factual list of what the divergence is so that people can look at it without a huge amount of analysis. Anyway, you have made your point and it is clear there is still more work to be done. As a supplementary, I want to ask you about Lord Dodds's questions, which I submitted to you for the meeting that you were not able to attend some weeks ago.

If you are saying that you succeeded with the negotiations with the European Union because there was confidentiality and people kept things in that context, which is perfectly understandable, is it fair to assume that, if you are not discussing or giving any information away, that implies that there are negotiations on the substance of the framework taking place?

Chris Heaton-Harris MP: No, you could not read that into what I said earlier. We have said we are not reopening the Windsor Framework as part of these negotiations. Mr Threlfall is going to helpfully interject some detail in answer to your previous question.

Brendan Threlfall: There are two aspects to regulatory divergence. First, government departments recognise the need to improve the quality of that, which is something that the committee has raised, and respond in the Explanatory Memoranda on all the regulations that come through to the committees in Parliament, which should make the position clear. That then gets reflected at a more operational level for business and investors on GOV.UK guidance.

However, the point the Secretary of State made about the lack of devolved Government is relevant because in lots of contexts some of the same departments have the challenge of having to map the divergence from no decisions coming from Northern Ireland. The scale of that is so much greater than the trade in goods element of the Windsor Framework that it places an additional resource burden.

Lord Empey: Thank you, Chair.

Lord Dodds of Duncairn: May I come in just for a moment, Chair?

The Chair: Please do.

Lord Dodds of Duncairn: Thank you. I have two questions for the Secretary of State on regulatory divergence. First, why does a company or a producer that does not trade with the European Union and sells its goods in Northern Ireland have to produce goods to European Union standards as opposed to UK standards? Secondly, is it intended that the trusted trader service, which helps and supports dealing with checks in the Irish Sea border, will be continued and, if so, for how long?

Chris Heaton-Harris MP: The UK internal market scheme is open for business for ever.

The Chair: Mr Threlfall?

Brendan Threlfall: I think Lord Dodds may have been referring to the trader support service that HMRC contracts. We have made it clear that that is a long-term commitment. The specific nature of the contract with the company that runs the service has been extended for an additional year. Subject only to a vote in favour by the Northern Ireland Assembly, which has the ability to switch off the majority of the Windsor Framework through the democratic consent vote, we would continue the trader support service long term.

Chris Heaton-Harris MP: On the first point, as the Prime Minister said in his Statement to the House in February when we launched the Windsor Framework, elements of EU law that have been in this negotiation do apply to manufacturers in Northern Ireland. We understand that that is not perfect, but it has helped get the Windsor Framework agreed between the UK and the European Union.

Lord Dodds of Duncairn: Would you describe it as a necessary evil?

Chris Heaton-Harris MP: No, but I think you might.

Lord Dodds of Duncairn: No, but I think that is what you are implying.

Chris Heaton-Harris MP: What it does do is allow market access. I recall that, back in 2016 when all this started post the referendum, the First Minister and Deputy First Minister at the time wrote a letter to the then Prime Minister, Theresa May, which I believe is on the public record, that talked about how unique the region is because it is the only part of the United Kingdom that has a land border with an EU state and how important it is to maintain access to markets for agri-goods and a whole host of other things. That is what we have been able to achieve—that level of market access—through the Windsor Framework. So no, I would not characterise it as Lord Dodds said.

The Chair: Thank you very much. I will say a word about regulatory divergence. I may be wrong, but having been a public servant for a large number of years I cannot help feeling that at some stage in the future a Government will be asked, “Where are the instances of regulatory divergence?”, and if they are not listed somewhere now, there will be a problem further down the line.

The other point is that we have agreed as a committee, as I mentioned when I saw Baroness Neville-Rolfe this morning, that we will be doing a short inquiry into regulatory divergence, starting after the Recess. That is just by way of background. Lord Hain will now say something.

Q25 **Lord Hain:** As one of your predecessors, Secretary of State, I wish you all the best in the job. To pick up on the previous exchanges, what is the point of Brexit unless GB can diverge?

Chris Heaton-Harris MP: GB can diverge.

Lord Hain: Will it?

Chris Heaton-Harris MP: It can. It is up to Parliament and elected Members of this place.

Lord Hain: Otherwise, there is no point in Brexit, is there?

Chris Heaton-Harris MP: I am very happy to rehearse in great detail—

Lord Hain: I do not think I will encourage you to do that.

Chris Heaton-Harris MP: —why I campaigned to leave the European Union and the various reasons why people voted to do exactly that. However, I recognise that Northern Ireland has the only land border with the European single market, and there have been various attempts to try to square the circle as to how, in this very complicated space, you guarantee that there is no illicit flow of goods into the European single market from the United Kingdom. I think the Windsor Framework has gone a reasonable way to square that circle. It has certainly made the relationship between the European Union and the United Kingdom a lot stronger at the same time.

When issues appear in the future, I am very confident that the United Kingdom and the European Union will be able to sit around a table, talk about them sensibly and come to a negotiated solution. People on my side of the fence in the referendum always wanted to be excellent neighbours to the European Union; we just did not want to share the same institutions.

Q26 **Lord Hain:** It is good to hear the “excellent neighbours” point. I will turn to the substance of my question, which is on the democratic deficit. I think everybody accepts that, welcome though it is, the Stormont brake is not likely to be used very often, if at all. There are day-to-day issues that affect Northern Ireland—rules made through the single market, in the main, for Northern Ireland—over which MLAs and Northern Ireland Ministers have no say.

There surely should be much greater focus on direct representation in the joint committee and the sub-committees for Northern Ireland Ministers and, crucially, their officials, and possibly an ad hoc arrangement with the European Parliament, which has co-decision, with Members of the Legislative Assembly in Stormont for consultation over any regulations or directives that might affect Northern Ireland.

Chris Heaton-Harris MP: A whole host of mechanisms are already available. The UK-EU Parliamentary Partnership Assembly, which has 30 or 31 Members of each legislature, meets regularly under the joint chairmanship of, I believe, Oliver Heald and Nathalie Loiseau.

Lord Hain: That is UK to EU, not Northern Ireland to EU.

Chris Heaton-Harris MP: But there is Northern Ireland representation on that committee.

Lord Hain: A minority.

Chris Heaton-Harris MP: I understand your point. As we have said, when the joint committee sits and talks about matters that relate to Northern Ireland, the First Minister and the Deputy First Minister can go to those meetings. I do not know the exact language we used in the Windsor Framework on that, but essentially—

Lord Hain: It seemed to me to be a bit vague. Could you maybe give a statutory right for Northern Ireland Ministers and their officials to be in meetings of any of the sub-committees, or the joint committee itself, when any issue affecting Northern Ireland is discussed?

Chris Heaton-Harris MP: They should have access to those meetings as First Minister and Deputy First Minister. I am not sure how the statutory effect would work, so I do not want to commit.

Lord Hain: I mean with the EU.

Chris Heaton-Harris MP: I think we have that agreement for matters relating to Northern Ireland.

Lord Hain: So the First Minister, the Deputy First Minister or any of their sectoral Ministers, depending on the subject, can, as of right, attend any meeting.

Chris Heaton-Harris MP: The First Minister and the Deputy First Minister can attend meetings where Northern Ireland matters are discussed.

Lord Hain: As of right.

Chris Heaton-Harris MP: I believe so.

Brendan Threlfall: That is the commitment that we have made in the Command Paper to Parliament; they would be formally part of the UK delegation. We have done that on an ad hoc basis previously, which worked well. Obviously, the biggest barrier to it currently is the lack of a First Minister and Deputy First Minister.

Lord Hain: I understand that, but it would be very good if you could formally codify it, and if Northern Ireland officials could be informed and consulted by European Commission officials in advance of any forthcoming changes that could affect Northern Ireland.

Chris Heaton-Harris MP: I honestly do understand the point that you are making. I am not sure how we would codify that as such, but there is no lack of willingness to get to a place of very good practice in this space by either the European Union or the UK Government. We are missing a First Minister, Deputy First Minister and so on at this point in time. I would like to think that this is one of the places where that understanding

would evolve over time, because practically everybody wants this to work.

Lord Hain: I welcome that. Will you not necessarily commit to it now but have a look at formalising it, because I genuinely think there is a democratic deficit problem? The Windsor Framework sought to address it, but it remains a problem.

In that respect, you mentioned the UK-EU assembly in which a few MLAs could be represented. Is there not a case for asking the European Parliament, since it has formal co-decision powers, to consider a direct consultative mechanism with Members of the Legislative Assembly on any issues that affect Northern Ireland and for which Stormont, if it is up and running, as we all hope it will be soon, would be responsible?

Chris Heaton-Harris MP: As a former Member of the European Parliament, I would not want to suggest to the European Parliament what it should be doing in relation to its relationship with a nation of the United Kingdom in any way, because it would be churlish of me to do so. However, I see some practical sense in what you are suggesting, and I will happily take it away to think about some more, but that is one very much for a bit longer term. We need to get the institutions up and running and the processes that we have already set out working, because they will bear fruit in this space.

Lord Hain: I welcome what you say and thank you. However, I suggest that one of the ways in which you could accelerate the process of getting Stormont up and running is to make sure that that relationship is secured. It may give encouragement to the DUP and others that at least the democratic deficit is being addressed, which it is understandably raising.

Chris Heaton-Harris MP: As I said, I cannot necessarily talk about what we are discussing with the Democratic Unionist Party, but I very much welcome the point.

Lord Hain: Thank you.

Lord Caine: Forgive me, Peter; with the greatest respect, you were perhaps a little dismissive of the Stormont brake at the beginning of your question. A lot of us regard that as a huge step forward in the Windsor Framework that gives a real and meaningful role to the Stormont Assembly.

Lord Hain: It is in a crisis situation, Jonathan, is it not? Every week—

Lord Caine: One would hope not, but the use of the Stormont brake will be entirely down to the Assembly Members who choose to trigger it. As you know, in those circumstances, the draft legislation disappplies. Quite uniquely, it gives the United Kingdom Government the power of veto over the application of EU law in Northern Ireland. That is a huge step.

Lord Hain: I understand that. In the day-to-day business of government

in practice, it is not going to get to that point. It is more important that Stormont has consultative rights in the way that I have suggested.

Lord Caine: As the Secretary of State pointed out, of course.

The Chair: Looking at the clock, I think we should move on.

Q27 **Lord Thomas of Gresford:** The fundamental weakness of the Stormont brake, which you cannot get around, is that it applies only when legislation has been formed in the European Union, by whatever mechanism it uses, and is presented to Northern Ireland as something it must obey. It is only then, after all the negotiations have taken place within 27 states, that it can have any say about whether it should apply to Northern Ireland or not. Of course, another fundamental weakness at the moment is that Stormont is not meeting anyway.

Surely, it is much more important that Northern Ireland should have a voice in the making of legislation and be consulted from the beginning. I would like to know whether you have had any dialogue with the European Union to ensure that detailed procedures for such prior consultation with Northern Ireland Ministers, MLAs and officials are put in place for all new EU legislation that applies to Northern Ireland. Is there any input that you are discussing with it in the joint committee and the sub-committees?

Chris Heaton-Harris MP: I thank Lord Thomas very much for his question. First, forgive me for disagreeing, but the Stormont brake is quite unique in the European Union's relationship with any other third country. When the Stormont brake came about, one of the chief helpers of the EU's then chief negotiator Michel Barnier said that he thought it was a quite a remarkable thing to have achieved for Northern Ireland.

Lord Thomas of Gresford: I think the arrangement with Norway has been applied fully only once in decades. So it is very unlikely that the Stormont brake would ever come into effect, getting over all the hurdles of the 30 MLAs, the petition, the position of the UK Government and so on. It is very unlikely that it will ever be applied. It is just a framework within which negotiations can take place, is it not?

Chris Heaton-Harris MP: I disagree quite fundamentally with your characterisation of the Stormont brake. As Lord Caine said, when 30 MLAs from at least two parties submit an application that meets the conditions in the text, the UK will be under a legal duty to trigger the brake and suspend the application of the amending or replacing EU measure. Once the brake is pulled, the rule is suspended and the UK has a veto on whether it should be permanently disapplied in Northern Ireland.

Lord Thomas of Gresford: What do you say to my point that the measure has been completed and gone through all its stages? There is no input through the Stormont brake, is there? There is only something to stop something applying.

Chris Heaton-Harris MP: Without an Executive up and running and Members of the Assembly, it is very difficult to say how an Assembly would want to use this tool. Speaking to various MLAs, I know they want to use it wisely and proportionately. They want to have help, in a way, from the British Government to make sure that there is horizon scanning going on so that as new regulations and directives are being worked up we can point to a scrutiny process both in this place and, I would like to think, in Stormont—again, it is up to MLAs—to look at the horizon for future EU law, spot these things as they are coming down the track and have those conversations.

Until we get the Assembly up and running, it is very difficult to know how this will form itself. We have given a lot of individual powers to the Assembly in the Windsor Framework and the Stormont brake, but it will spend some time working out how to use them and how to engage the European Union and the UK Government in these discussions.

Lord Thomas of Gresford: You referred to the presence of the First Minister and Deputy First Minister on the joint committee. Baroness Arlene Foster told us that in the ad hoc membership that she enjoyed in her period that it was not worth while going, because nobody took any account of the Northern Ireland voice. Everything was decided between the UK Government and the EU, with Northern Ireland not being heard.

It is the working-up processes where you need to approach the democratic deficit. That is where there should be input at an early stage. So far, have you had any discussions about the formation of the new sub-committees of the joint consultative group? Has anything happened to get that machinery in operation?

Chris Heaton-Harris MP: I will hand over to Mr Threlfall in a second to answer that question. Forgive me; again, that is a characterisation that I do not recognise of the processes that are ongoing at this point in time.

Brendan Threlfall: The joint consultative working group is up and running. The terms of reference have been agreed. We engage very regularly with Northern Ireland Civil Service colleagues on all the issues raised in the working group. Some of the specific sub-groups we committed to in the Windsor Framework are up and running and have met. There is lots of dialogue there.

However, as the Secretary of State said, there is an obvious gap. In the Windsor Framework, we envisaged that there would be a democratic scrutiny committee in the Assembly that would look at things in the pipeline, because we agreed that the best solution is to address things up stream. That is what we are aiming for. The UK and the EU have agreed a declaration as part of the Windsor Framework that we would work towards joint solutions wherever possible. From our perspective, the Stormont brake is none the less very important because, if you have only a consultative role and no ultimate safeguard, that changes the dynamics of discussions.

The Chair: I am afraid we need to move on.

Lord Thomas of Gresford: I have one last question, if I may.

The Chair: A very quick one, because time is running short.

Lord Thomas of Gresford: Is there any representation for the Northern Ireland Civil Service on the new joint consultative working group sub-committees?

Brendan Threlfall: I will double-check for the committee, but I think they have attended every one. In fairness to our Civil Service colleagues in Northern Ireland, it is very difficult for them to take a position, because they do not have any elected Ministers, so they are very limited in the substantive steers they can give. It shows the gap when you do not have a restored Executive and Assembly there.

Lord Thomas of Gresford: Thank you.

The Chair: Thank you. I must say that as far as the Stormont brake is concerned it seems to me that it is a question of "only time will tell". We need to come back here in a couple of years' time and see how things are going. Lord Godson.

Q28 **Lord Godson:** Thank you, Chair, it is much appreciated. Welcome to you, Secretary of State. I understand you are the first Secretary of State to appear before this committee and you are welcome, of course. You may not always have felt welcome in the light of some of the questioning earlier.

On the broader questions raised by Lord Hain, a former Secretary of State, the Secretary of State has a unique role under the aspects of the Belfast/Good Friday agreement. Will you give us a flavour of your reaction to the Taoiseach's prediction that there will be a united Ireland in his lifetime?

Chris Heaton-Harris MP: As the former Secretary of State will know, obviously I have to be careful when it comes to border poll questions, because these are decisions that will be taken by the people of Northern Ireland in time. But, no, I cannot see that in my lifetime—but obviously it is a personal opinion that the Taoiseach holds.

Lord Godson: Can I ask my noble friend Lord Caine—a poacher turned gamekeeper, as a former member of this committee—for his view?

Lord Caine: I should have said at the outset that it is a huge pleasure to be in a position of giving evidence to a committee that I had the huge privilege and pleasure to serve on under Lord Jay's chairmanship.

Of course, a united Ireland is an entirely legitimate aspiration, and it is entirely legitimate for the Taoiseach to express his desire to see that come about. It is not an aspiration that I or members of this Government share. We firmly believe that Northern Ireland's best future lies within a strong United Kingdom. I do not believe a united Ireland is either

inevitable or desirable. But, ultimately, it is entirely a matter under the Belfast agreement for the people of Northern Ireland themselves to decide democratically—but that does not mean we cannot have a view, and our view is one of strong support for the union.

Lord Godson: Thank you. I have two further related questions. Can I have your shared assessment, Secretary of State and Minister, as to whether there is a greater risk of divergence deriving from the Windsor Framework or from the absence of an Executive in Northern Ireland taking decisions that are required for the well-being and governance of the Province?

Chris Heaton-Harris MP: As I alluded to at the beginning, the real divergence that is occurring now is a divergence of outcomes from the National Health Service, because of the lack of reforms and the lack of ministerial steers, and of outcomes in education, because of the lack of ministerial steers from devolved Administration and Executive Ministers. We have spoken about a number of things where part of the solution would be having an Executive Minister taking decisions in this space. Those divergences are real and felt by everybody in Northern Ireland. I stake my hand there. There are real issues affecting the daily lives of people in Northern Ireland across public services and theoretical divergence in the future is quite a price to pay for current divergence in public services.

Lord Godson: My noble friend.

Lord Caine: I have nothing to add to what the Secretary of State said.

Lord Godson: Finally, following up on the health matters you raised, in the absence of Covid and flu vaccines, which have been flagged up as being from next April, what are your thoughts on where the greater danger comes from in that—from the Windsor Framework implementation or the absence of a devolved Executive?

Chris Heaton-Harris MP: The reason I was looking to my officials is that I have a whole section in my briefing on this matter, and I was trying to work out which page it was on, but the answer is quite straightforward: not having an Executive creates more issues than anything that the Windsor Framework creates in the short, medium or long term.

Lord Godson: Thank you.

Brendan Threlfall: I am aware of the issue with the Covid and flu vaccines. It does not stem from the Windsor Framework. It is because the Department for Health's powers to extend practical easements on how you can distribute these vaccines and use them sunsets at the end of March next year. We can legislate to extend those sunsets for Great Britain at Westminster through secondary legislation, but we need the Assembly back in order to legislate to extend them in Northern Ireland. Unfortunately, as the Secretary of State said, those examples are

multiplying week by week. It is an example of where only the Assembly allows for those decisions to be made, so Northern Ireland can keep pace with the rest of the UK.

Lord Godson: Thank you, Mr Threlfall.

The Chair: Thank you, Lord Godson. We will have a final question from Baroness O'Loan.

Q29 **Baroness O'Loan:** I have a very quick first question. The absence of the Northern Ireland Assembly has not prevented the Westminster Government legislating on matters of great significance in the past, so I would imagine that it would be possible for legislation to be passed in the context of access to Covid medication and vaccination. Will you comment?

Chris Heaton-Harris MP: I assume you are alluding to things in the RSE space or Dáithí's Law.

Baroness O'Loan: No, I am thinking about such things as the legacy Bill and stuff like that.

Chris Heaton-Harris MP: So manifesto commitments by the UK Government.

Q30 **Baroness O'Loan:** My question is: in the light of the Written Ministerial Statement on 23 May, which stated that responsibility for the delivery of the framework will be transferred from the Foreign, Commonwealth and Development Office to sit alongside the existing Northern Ireland Unit in the Cabinet Office, can you tell us, Secretary of State, who has overall responsibility for the Windsor Framework at Cabinet level? What is the role of the NIO in this context? Most importantly, how will the Government ensure effective co-ordination between the government departments and agencies involved in managing the operation of the Windsor Framework?

Chris Heaton-Harris MP: I thank the Baroness for her question, because it is a very good one. In the Written Ministerial Statement, the Prime Minister made it clear that the Foreign Secretary retains overall Cabinet-level responsibility for the UK-EU relationship, and that includes his role as the UK co-chair for the Withdrawal Agreement Joint Committee, which among other things is the key decision-making forum for the Windsor Framework. This obviously does not affect the Government's responsibilities to ensure that the UK meets its commitments to the people of Northern Ireland under Article 2.

We have agreed a series of implementation deadlines that are set out in the Windsor Framework and, as the Prime Minister set out, the responsibility for them is transferred to the Cabinet Office, and Baroness Neville-Rolfe is the responsible Minister. We have set up a small ministerial group within government, co-chaired by Baroness Neville-Rolfe and my Minister of State, Steve Baker, to go through these matters on a more operational basis to make sure that we are all joined up.

The Chair: Thank you very much, Secretary of State, Lord Caine and your officials. We are extremely grateful to you. It has been a very worthwhile session. I hope we have finished in time for you to catch your plane. On that basis, I declare the formal part of the meeting closed.