

# European Affairs Committee

## The Windsor Framework Sub-Committee

### Corrected oral evidence: Regulatory divergence and the Windsor Framework

Wednesday 22 November 2023

3.15 pm

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Members present: Lord Jay of Ewelme (The Chair); 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. 3

Heard in Public

Questions 17 - 24

### Witnesses

I: Stephen Kelly, Chief Executive, Manufacturing NI; Nichola Mallon, Head of Trade and Devolved Policy, Logistics UK; Anjulie Patel, Aerospace Programme Manager, ADS Group Ltd.

### Examination of witnesses

Stephen Kelly, Nichola Mallon and Anjulie Patel.

Q17 **The Chair:** Good afternoon and welcome to this public session of the Sub-Committee on the Windsor Framework. We are today holding our second evidence session for our inquiry into regulatory divergence. We have with us business representatives Stephen Kelly, chief executive of Manufacturing NI, and Nichola Mallon, head of trade and devolved policy at Logistics UK, who are both joining us remotely. With us in the room we have Anjulie Patel, aerospace programme manager at ADS Group Ltd. You are all very welcome; thank you very much for being with us today.

The first time you speak, please introduce yourselves for the cameras and the audience, as much as for us. Today's meeting is being broadcast and a verbatim transcript will be taken for subsequent publication, which we will send to you to check for accuracy shortly after the end of the session. I refer to the list of Members' interests, as published on the committee's website.

With that by way of introduction and once more saying how grateful we are to all of you for being with us today, I will ask the first question. Has regulatory divergence had any effect so far on the sectors with which you are most concerned and, if so, what impact has it had?

**Anjulie Patel:** As you mentioned, I am the ADS Group's aerospace programme manager. ADS is the trade association for the UK's aerospace, defence, security and space industries. Our sectors have a significant footprint in Northern Ireland, with a turnover of £1.9 billion, of which the aerospace sector generates £1.6 billion, so our members have a significant interest in today's topic and the trading environment in Northern Ireland.

To answer your question about the impact of regulatory divergence on our sectors, as I mentioned, ADS represents four different sectors with international footprints and is keen to foster regulatory alignment wherever possible, especially in such a highly regulated sector as aerospace. At the moment, the main issues are the current administrative burden on companies and access to the green lane, but future divergence issues and the risk of future divergence is very much a live topic.

A current example of the impact the sector is already starting to see is in the differences between UK and EU REACH—the chemicals regime. Another is more of a future risk: alignment between the Civil Aviation Authority in the UK and the European Union Aviation Safety Agency. Aviation safety regulations in the future will be really important and any differences there will cause a risk and other frictions with movement between GB and Northern Ireland.

**The Chair:** Thank you very much for that very good introduction. We will follow up some of the points you have outlined in more detailed questions later.

**Stephen Kelly:** I am the chief executive of Manufacturing Northern Ireland. We represent the broadest possible definition of manufacturing. It is anything from aeroplane wings to chicken wings, and everything in between, which I think I have said before to the committee.

At this point, regulatory divergence has not been visible. We are pretty much three years into the operation of the Northern Ireland protocol and the issues have not emerged yet. That is for a number of reasons, one of which is that this body of law is quite old. The UK has inherited it into its own statute, and decisions by the UK to diverge, either passively or deliberately, have largely not been taken.

Our expectation is that a lot of the issues covered from an EU law perspective will be upgrades or additions to existing laws depending on new information. If, for instance, certain inputs or products were viewed over time as being carcinogenic, the EU would change its rules to exclude them while the UK may decide not to do so immediately. The reality is that both the lawyers and insurers would insist that it would happen

because the risk the items would cause potentially to UK consumers, or indeed consumers elsewhere in the world, would be such that the UK would be forced, legally and by insurers, to make those moves.

The short answer is that some small issues have emerged but, to this point, in three years, they have not been wholly visible nor hugely detrimental. Our summary is that, while the issue of regulatory divergence and Northern Ireland having to follow EU law is theoretically an issue and a challenge that may be of interest to academics, the people who are operating this on a day-to-day basis have not flagged it as being a massive issue for them.

**The Chair:** Thank you very much. That, too, was a very interesting introduction.

**Nichola Mallon:** I thank the committee for the opportunity to give evidence today on behalf of our members. I am Head of Trade and Devolved policy at Logistics UK—one of the UK’s largest business groups. We represent the entire logistics industry and we have a membership of over 20,000. That includes regional, national and global businesses and SMEs that span road, rail, inland waterways, sea and air, as well as the buyers of freight services, including retailers and manufacturers within our membership.

To address your question, when I consulted our members, a number of them took the opportunity to reiterate the impact of this new trading environment on their business model, so it is important that I take this opportunity to reflect that. The point they made, which the committee will be well aware of, was that meeting the different requirements for GB-NI in relation to movements has reduced their flexibility, added cost and impacted their workload, staffing and available resources without a corresponding increase in revenue. In some cases, it has also increased emissions.

On the wider impact of regulatory divergence between the UK and the EU, it has so far been limited because the UK has largely retained EU law.

Logistics UK members welcomed the pragmatic approach of the UK Government to the retained EU Law Bill. However, be it active or passive, regulatory divergence will come and, as I am sure we will discuss as we go through the question and answer session, it is not possible to predict its extent, which is why it needs to be constantly monitored, reviewed and assessed for both its intended and unintended consequences.

**The Chair:** Thank you very much. They were three very interesting introductions, for which we are grateful. We will now move on to some more slightly more detailed questions.

Q18 **Lord Dodds of Duncairn:** Welcome to our witnesses; I am sorry I cannot be there in person. I want to ask about the impact of the Windsor Framework on regulatory divergence, compared to the original protocol. What do you assess to be the difference, if there is any, both in theory

and in practice?

**Nichola Mallon:** A positive example is titanium dioxide. As I said, we have retailers in our membership and the committee will know that the removal of titanium dioxide was a real concern for retailers given that the compound appears in so many products. As a result of the Windsor Framework that problem was resolved, but it brought into sharp focus the very live issue and the potential consequences of regulatory divergence.

Also, from a positive perspective, the Windsor Framework has reduced divergence for goods that remain in Northern Ireland, which is delivering benefits for the retail sector. However, we still require clarity regarding trade with goods from the rest of world and whether the UK will align on standards on certain goods, which will determine whether they can come to Northern Ireland or not.

In relation to hauliers and logistics operators in particular, the big test will come in October 2024 when the custom changes take effect and the green lane is expanded to include freight and parcels, so it is too early to say in that regard. I take this opportunity to appeal to UK officials to continue to work meaningfully with the logistics sector so that we can road-test proposals ahead of their implementation.

Another positive is that under the Windsor Framework there are structures and commitments on both the EU and the UK side, through the Special Goods Body and the Office for the Internal Market, to monitor and assess the impact of regulatory divergence. We will have to see how these operate, but having those structures and commitments is certainly a welcome start from our perspective. It is important that we make sure that the logistics industry—the people at the coalface—have the pathway to meaningfully input into those processes.

**Stephen Kelly:** I have a couple of things to add to what Nichola said. The EU also committed to carrying out impact assessments and committed that, alongside the UK, there would be representatives of business, civic society, stakeholders and so on in those early conversations. Up to now, we have not seen any of that detail or those new structures or functions operating to any great extent, so time will tell on that.

To give a practical example of where the Windsor Framework has been helpful, you and your colleagues will recall that there were some issues after Russia's invasion of Ukraine regarding the EU changing its approach to tariff rate quotas on steel products. We were very critical of that move at the time because there was no engagement at all with Northern Ireland. The potential economic impact in Northern Ireland was that some categories of steel product would have been subject to a 25% safeguarding duty, and that became a point of contention between the UK and the EU. It was resolved as part of the Windsor Framework, so there was agreement some seven months later. That was a good outcome.

The interesting thing is that, not just sitting on the Windsor Framework as the end of this, in recent weeks the EU announced that, from 1 January, a similar approach will be taken to five additional types of steel. It has done that because the relationship between the UK and the EU is better, because data is available to show that Northern Ireland does not present a backdoor risk of movement of some products into the EU's market and because it potentially fixes a problem that could exist further down the line. The improvement in the relationship between the UK and the EU has led, on one level, to more pragmatism, which is welcomed by everyone, and, secondly, to work continuing to avoid any potential harm that may be visible in the future.

If we apply that example to the issue of regulatory divergence and the risk that it could theoretically present, with the better relationship between the UK and the EU, and with further engagement with business, civic society, traders and others, we believe that the framework offers a great opportunity to fix and repair what may have already existed but also to avoid any potential future harm. From our perspective, the Windsor Framework was all about having a better relationship so that issues could be resolved in the interests of both the entirety of the UK and the EU itself.

The movement of steel is a good practical example of where those relationships are positive, pragmatic and done in a partnership way. It demonstrates that, while there may be risks associated with regulatory divergence, we can put in place a management system that identifies early what the movements may be and what impact the changes may have—someone tapping people on the shoulder in Brussels as well as in Whitehall and asking, "What are you working on? Do you recognise that there's also a responsibility here towards Northern Ireland? What is your plan to mitigate should any future issues develop here? Do make your moves, provided your mitigation is in place in advance". Problems arise when things come as a surprise to everyone but, by having a management system in place first and ensuring that an assessment is done and the mitigation is put in place, we can overcome whatever future challenges exist.

**Anjulie Patel:** Similar to what Nichola and Stephen said, for us the Windsor Framework marks a step towards a reduction in tensions between the UK and the EU. To add a couple of examples to what Stephen has already highlighted, the recent announcement of the UK's association with the Horizon Europe and Copernicus schemes was really welcomed by our industry. ADS is hopeful that this betterment in relationships will unlock future issues. The mechanisms in the framework have the potential to positively manage and mitigate against future divergence, but do not in themselves entirely remove the risk of future divergence, so it will be interesting to see how that relationship develops, how those mechanisms and structures are used and, importantly, how industry will be brought in to feed into that.

**Lord Hain:** Nichola, you made the important point about the

stakeholders needing to be consulted, and perhaps as a committee we will pick that up. If you have anything more to add on that stakeholder interaction, will you write to us? The same goes for Stephen and Anjulie.

**The Chair:** That would be very helpful; thank you.

Q19 **Baroness O'Loan:** What do you think are the main risks or opportunities in relation to regulatory divergence now and in the future?

**Stephen Kelly:** Thank you for your question. I will start with some of the risks. The main risk that we see as a business community is a capacity risk. The Northern Ireland Civil Service is our primary point of contact because it is nearest to us, of course, but it is a service under stress in terms of resources, recruiting talent and budgetary pressures, as I am sure the committee is well aware. Having the capacity, experience, expertise but more particularly the resources to manage this is a concern. I would extend that equally to the business community. We are a small but incredibly important part of the UK's business community and we have limited resources. Trying to keep track of everything that is happening in the EU and the UK, and should we get an Assembly back in Northern Ireland, causes us some concerns about our ability to resource fully what is required.

Regarding opportunity, however, some incredibly interesting and good work is currently being done by our Department for the Economy. It has engaged the University of Sussex's UK Trade Policy Observatory to look at the issue of dual market access and where regulation has its biggest impact on opportunity for Northern Ireland.

They are looking at access to the EU's market for individual sectors, down to a SIC industry code, and even individual products and product codes, to see where the regulatory intensity is particularly high, making it difficult for businesses elsewhere in the UK to access that EU market, where Northern Ireland has the opportunity because we follow these rules to service that EU market. It is identifying real sweet spots for Northern Ireland industries and potential products that can be made in Northern Ireland, where we have the biggest opportunity in foreign direct investment, which is really important. Investment agencies travel across the globe looking for investors to come, create production facilities and put their money into Northern Ireland.

In addition to that, it will provide a really strong set of information that our existing businesses, whether homegrown in Northern Ireland or already here, can take to markets. At the end of this process we will have a clear understanding of who the foreign direct investors are that should be coming to Northern Ireland in terms of market access, because of that regulatory intensity in either their industry or their product line, and a set of pitch documents for our own entrepreneurs to take to their potential customers in Europe and elsewhere to demonstrate that Northern Ireland has this unique opportunity to trade. From our perspective, there are some risks, largely around resourcing and capacity, but there is also emerging information and analysis that demonstrates and puts meat on

the bone of what dual market access looks like, which we can use for attracting new investment and allowing our own entrepreneurs to go and sell more.

**Nichola Mallon:** Stephen has covered a lot of common ground there. In theory, there are opportunities for the UK to develop its own regulatory regimes that encourage innovation and are more responsive to the needs of the UK economy and a growth agenda. However, I qualify that by saying that there needs to be constant review and assessment of the impact of any changes on the movement of goods from GB to NI, and how that may impact the use of the UK Internal Market Scheme by traders. If there is significant divergence, it could increase production run and transport costs, stress supply chains and increase the risk that the Northern Ireland market becomes too expensive and difficult to service for smaller GB businesses. It is important that we are mindful of that.

We must also be mindful that in all of this there will be opportunities for Northern Ireland, given that it can trade barrier-free into both the UK and the EU market.

Another area I want to flag is the new, emerging issue of driverless vehicles, automation and AI, because that will significantly impact the logistics sector. There is the question of how new, emerging issues are regulated and to what degree there is harmonisation.

Lastly, I am very conscious at this stage that this is very hypothetical, but I agree with Stephen that one thing is not in doubt: there is certainly risk for businesses, particularly for smaller ones, in having the capacity to respond and manage this. It is almost impossible for them to do that, which is why the structures are so critical.

**Anjulie Patel:** I will not repeat what Stephen and Nichola already touched on but try to add to it. An opportunity the UK could take up is to think about building up the capacity and capability of advanced manufacturing regulatory authorities, particularly for the regulation of AI, so that we can get products to market as quickly as we can, so that they are innovative within businesses, reducing the risk of global competitors beating us to market or businesses based in GB or Northern Ireland having to go elsewhere to get their goods certified and placed on the market. That is an opportunity we would recognise.

As Nichola touched on, the risk is that, if there is a significant or disproportionate amount of divergence, the larger companies would start to think about how they can set themselves up to be able to manage it, whereas, because of the day-to-day operational and customs challenges that companies in Northern Ireland in particular are facing, the divergence would have a disproportionate impact on them and they may not be able to keep up with what they need to do or address it in the correct manner.

Q20 **Lord Hain:** The answers have been very interesting. Anjulie, the point you just alluded to about the difference between large and small

businesses is an issue that has come up quite a lot with hauliers and all sorts of other aspects we have been investigating. Bearing in mind the points you made about AI and future technology, for which there are no regulations at the moment—they have to be created—and existing products, for which there are common standards because they have not been changed, how do you see that going in terms of the multinational, multipronged connections between Northern Ireland and Great Britain, Great Britain and the EU, and Ireland and Northern Ireland? I am sorry that this is a long question, but will you also bear in mind Stephen's very interesting point that lawyers and insurers are insisting on common standards anyway in order to deliver what you want?

**Anjulie Patel:** If you do not mind, I will break that down a little.

**Lord Hain:** Please do.

**Anjulie Patel:** Let us think about the differences between the movements first. When you are moving a good between GB and the EU, that is an area where there is a bit more guidance and understanding. There have been a few teething issues about the movements but there is a bit more general understanding of what businesses need to do.

Thinking about movements between GB and Northern Ireland, in the midst of incoming future tech there is the risk of new regulations happening in Northern Ireland under EU rules and their not happening fast enough in GB. That creates the trade friction that we have all been alluding to. I suppose there is a risk on both sides. For example, if the UK has rules and regulations on AI first and Northern Ireland suppliers are separate to that and do not have the same regulations, there is the risk that in the GB market there will be another supplier able to fulfil that and perhaps the Northern Ireland supplier will not get a look in.

On the flip-side—sorry for the complicated answer I am giving—if Northern Ireland has new regulations, it might start looking towards EU suppliers that have the same regulations in order to place its good on the market as quickly as it would like to. Ultimately, that will break down the supply chains that, especially for our sectors, have been developing over 100 years between GB and NI, and perhaps undermine the UK's internal market and affect the economy. That is quite a big risk, so I can understand why lawyers and insurers are insisting on similar standards to make this process a little smoother.

**Lord Hain:** Have you had any evidence of them doing that?

**Anjulie Patel:** I have not yet. As we mentioned before, this is a theoretical issue. It has perhaps been happening in other sectors, but not yet in ours. It is very much a future risk that we are wary of.

**Nichola Mallon:** From our members' perspective, the potential impact of regulatory divergence is most significant—no surprise—on the movement of goods from GB to EU, and, potentially, on the movement from GB to NI. On the GB to EU movements, it is more pronounced given different processes including customs, regulatory environments and requirements,



which affect the buyer, the seller, the exporter, the importer, the haulier and the agent. Of course, we are also alive to the incoming Border Target Operating Model and how that will further impact things.

**Lord Hain:** Could you clarify what you mean by the border operating model?

**Nichola Mallon:** The Border Target Operating Model will introduce new import controls on goods coming from the European Union into GB. Again, these are changes that traders and people moving goods will have to adjust to and will introduce a set of new requirements that have to be met. The wider point here – and this is an important undercurrent – is the cumulative impact of change that logistics businesses and traders have had to adjust to over the last number of years and throughout next year in particular. It is quite significant.

If you look at movements from GB to NI, as we previously discussed in respect of question 2, the Windsor Framework has brought some protections, but there are concerns, which goes back to Anjulie's point, about smaller operators and how they might be impacted, and how any divergence may result in a situation where the requirements are greater than the economic and business advantages to be had. That is certainly something that we would be mindful of.

I would also use this opportunity to raise the point about TSS—the Trader Support Service—we know it is going to be funded by government until December 2024. If that free service is removed at that point, that will introduce an additional cost for many of the smaller businesses that rely on TSS to move goods across from GB to NI. I think it is important that we keep things like that at the forefront of our minds.

The last issue that I would raise is the significant challenge in terms of moving rest-of-world goods from GB into NI since the Windsor Framework. I will share one example from a member business here in Northern Ireland. Currently, New Zealand raw material cannot move into Northern Ireland from GB unless it has been further processed. We have members that have New Zealand stock sitting in a cold store in GB, but they cannot get a business to move it across to a facility in Northern Ireland. Issues like that need to be worked through and we need to find pragmatic solutions, because it is in all our interests to keep goods moving and trading as smoothly as possible.

**Lord Hain:** Do you mind just clarifying whether you want us to say something about the Trader Support Service as a committee or are you going to press this case?

**Nichola Mallon:** I will be pressing the case. We need to make sure that we are reducing the financial burden on businesses that are keen to trade. A number of smaller operators rely on the Trader Support Service because it is a free service. We would be keen that a free, high-quality service continues so that it can support businesses. It is a side point, but I wanted to take the opportunity to make it.

**Lord Hain:** I have given you that opportunity, I think.

**Stephen Kelly:** In terms of those movements that Nichola just referred to, I suppose the impact of regulatory divergence on a GB to NI route is around inputs that may not be permitted into the EU. We had that smaller example of titanium dioxide that Nichola mentioned earlier, which the UK and EU resolved through the Windsor Framework. It proves that there are routes here to manage divergence whenever that occurs.

In terms of that north-south route, a lot of the issues are outside the scope of the protocol and the Windsor Framework as a result of the protocol. It is often misunderstood that Northern Ireland is in the EU single market. We are not. There is a set of rules that Northern Ireland traders must follow to avoid the need for a hard border on the island of Ireland. That does not cover all our economy; it does not even cover all of manufacturing. For instance, our manufacturers cannot directly participate in public procurement in the EU. They may manufacture goods—say, construction materials—but they cannot directly bid as an entity to an authority in Ireland, Germany or elsewhere as part of that public procurement.

**Lord Hain:** Excuse me, Stephen. Why not?

**Stephen Kelly:** They can participate but not directly bid for it. It was felt that public procurement was not a reason to create a border on the island of Ireland. We are not fully in the EU's single market; we only have a set of rules that we follow in order to avoid that border element. It is the same with the movement of people. Obviously, we have the common travel area between the UK and Ireland. That was written at a time when our nations were formed in a particular way, but we are much more diverse countries now, both Ireland and the UK, and people of third-country nationalities are not able to participate or move across the border to participate in work and so on.

A very useful mapping exercise was concluded between the UK and the EU. I think it identified about 145 or so areas of co-operation that were dependent on something that resulted in something like the protocol. It would be useful for the UK and the EU, as a result of the Windsor Framework, to rerun that exercise to see if all those 145 areas of co-operation can continue.

In terms of that all-island dimension, most of the new frictions are outside the scope of the Windsor Framework. We have examples where Ireland in recent weeks introduced what is called its deposit return scheme. From the end of January, consumers in Ireland will be able to take plastic bottles to a retailer and get five cents refunded if they recycle those bottles. Obviously, we do not have a deposit return scheme in Northern Ireland as yet. The UK is struggling to find agreement within its nations to find a model that works across England, Scotland and Wales as well as Northern Ireland. We have producers in Northern Ireland that sell goods through retailers in Ireland, but they cannot get both the bar-code

and the logo required to avoid that 5% additional charge on to their product, whereas their competitors in Ireland are able to achieve that.

There are areas of divergence that are outside the protocol that are causing frictions, which require better relationships between the UK and the EU, and a better relationship between the Northern Ireland Assembly and the Irish Government to ensure that those frictions are removed and that the full prospect of that dual market access is realised.

In relation to the last movement that Nichola talked about, which is GB to EU, the UK is still to introduce its external inbound border. It has an external outbound border when goods arrive in the EU and its full EU customs control, but not until the end of January 2024 will we begin to see the UK's inbound border in play. We are covered in terms of our unfettered access, which is locked in in UK law. The UK Government have made it clear that there will not be any additional paperwork requirements and so on for Northern Ireland traders to access and sell into the rest of the UK marketplace, but our food industry is insisting that there are.

Why would it ask for that? It would ask for that because it protects the provenance of its product in the market first and foremost. In addition, unfettered access is meant to be just for Northern Ireland companies. It is a frustration that Irish producers could just drive stuff to Northern Irish ports and send those products straight across into the rest of the UK marketplace and get the unfettered access that was intended for us only. There is an economic reason as well as a product provenance reason why the food industry is asking for some controls to be put in place for firms in Northern Ireland to justify that they have the unfettered access privilege that others should not have.

**Lord Hain:** Can I just press you on one brief point, which is the procurement issue? Are you saying that a Northern Ireland building firm in Newry, for example, cannot bid for a contract for a health clinic just down the road across the border as it may always have been able to do?

**Stephen Kelly:** Yes, but it is only in public procurement right across the EU. The feeling was that public procurement did not create the need for a border on the island of Ireland, so those were some of the rules that were set aside and not included in any protocol. Northern Irish construction firms can participate in the building of that hospital, but they cannot be the lead contractor on the public procurement bid. It is the same for uniforms for police forces in the Netherlands or post offices in Italy and so on: they cannot be the direct lead in terms of a public procurement bid.

**Lord Hain:** They would have been prior to Brexit.

**Stephen Kelly:** They were, yes.

**Baroness O'Loan:** I just want to follow that through. The purpose of public procurement law is, surely, to create a process that is fair and not

to exclude third countries. I think that the EU does not, through its public procurement system, require that a European Union business does business only with member states of the European Union, so I do not understand why you should be precluded from bidding for contracts even when you have a good economic basis for so doing.

**Stephen Kelly:** Yes, we agree; we would absolutely agree. We would love to see that in place. There is a series of restrictions that were gradually removed over the UK and Ireland's joint membership of the EU—for instance, around having economic entities where a director of that economic entity needed to be in the state—that have all been reintroduced as a result of Brexit. If a Northern Ireland manufacturing business wished to set up a subsidiary in Ireland, it would need on its board someone who was resident in the Irish state in order to be legal as a company.

There is a whole series of new rules that have been applied post Brexit that were not there while we were joint members of the EU, and that causes frictions. All these things are outside what the protocol and the Windsor Framework actually deal with, which is about removing the need for that hard border on the island of Ireland.

Q21 **Baroness Ritchie of Downpatrick:** You are all very welcome. Perhaps we already addressed some of these issues in the previous answers but, first, what is your assessment of the Windsor Framework's mechanisms to manage divergence, including the new special goods body and the role of the Office for the Internal Market, as described in the UK's Command Paper *The Windsor Framework: A New Way Forward?* Secondly, what might the impact of the Stormont brake be on regulatory divergence?

**Anjulie Patel:** As we touched on, the Windsor Framework sets out mechanisms with potential for managing divergence. At this stage, it is too early for us to assess the full impact of those mechanisms. We are working with our member companies to make sure that we collectively understand what these mechanisms are and can feed into them once they are in the public forum.

We have not specifically looked at the Stormont brake. From our perspective, going back to something I mentioned earlier, the fundamental issue for us remains the operational and customs challenges that could be eased by aerospace or aeroparts being allowed access to the green lane and being declared "not at risk", because a lot of the movements for aerospace in particular between GB and NI are movements for processing. This is the main issue that we are considering at the moment.

**Baroness Ritchie of Downpatrick:** Thank you. Nichola, you have already referred to the border target operating model. I know you and your colleagues have been working with the UK Government and Baroness Neville-Rolfe on those issues. Maybe you could also touch on that, as well as dealing with the special goods body and the Stormont brake.

**Nichola Mallon:** I suppose the point in this context about the Border Target Operating Model is that logistics businesses and other businesses have had to adapt to a significant amount of change, if you look, for example, at EU exit, the pandemic, the war in Ukraine and supply chain disruption, energy price shocks when it comes to fuel, inflationary pressures, the Windsor Framework which requires adaptations, and then the incoming Border Target Operating Model, the first milestone of which is, as Stephen said, January next year. The date for implementation of the third stage of the Border Target Operating Model is October 2024, which also coincides with phase 2 of the Windsor Framework. Logistics businesses and traders are having to operate in a significantly changing landscape when trade requires stability and certainty.

As to the assessment of the mechanisms under the Windsor Framework, the Special Goods Body and the role of the Office for the Internal Market, I would begin by saying that, given everything that has been preoccupying the minds of our members, there is very limited awareness or understanding of these structures among the logistics industry. That raises an important point about the availability and accessibility of information. Logistics UK's assessment is that the structures are a welcome start but, as Anjulie said, we are still at a very early stage, we therefore require much more detail and operational clarity before we could give a definitive assessment.

For the Special Goods Body, my understanding is that it has not met yet, and it is not clear exactly when it plans to meet. Again, I make the point that it would be important for our industry and others to have a clear and meaningful pathway to input into that process, but that requires that Northern Ireland stakeholders have enough information about the legislation, be it primary or secondary legislation, at a sufficiently early stage to assess its impact, and importantly, have the resource to devote the time and the expertise required. It is a reiteration of the point that Stephen made about the capacity within businesses and the level of expertise and resource that is required given it is such a technical, complicated and potentially voluminous picture.

On the Office for the Internal Market, my understanding is that it needs to be requested to input by a Northern Ireland public authority—for example, the Executive Office. I wonder if there is a role for the Office for the Internal Market to be compelled to monitor and mitigate risks and have an obligatory role in Northern Ireland's stakeholder engagement. At this stage however, we do not have sufficient clarity and detail to make definitive assessments on either, but both bodies do provide a very important opportunity. Underpinning all of this is the importance of the ongoing effort to maintain the positive tripartite relationship between the UK, the EU and Northern Ireland.

**Baroness Ritchie of Downpatrick:** What do you think the impact of the Stormont brake will be on regulatory divergence?

**Nichola Mallon:** In relation to the Stormont Brake, it is hard to say at this stage because it has not been tested. It is important that guidance is

issued on how it will work, so that we can discuss the process with our members.

**Stephen Kelly:** I agree with pretty much all that has been said so far. What I could usefully add is that we have met with the Competition and Markets Authority and the people at a board level responsible for the Office for the Internal Market, and they found it useful to hear an on-the-ground perspective from us about what we would like to see happening with their functions. We have met the team involved with the Office for the Internal Market in Northern Ireland. It is quite a small team, and I suggest that there is probably an opportunity there for that team to be bolstered in the interests of not just Northern Ireland but all four nations of the UK. I would make the pitch for that OIM team to be based in Northern Ireland; it would perform a very useful function and send a very strong signal about how important Northern Ireland's position is within the UK's internal market.

In 2018 we raised with the Brexit committee in the other House the need for not just a law but a body that had some teeth in ensuring that not just Northern Ireland but the other nations of the UK had an equal and level playing field for access to those marketplaces. This has been exercising the business community, in essence, for the past five years in this process. Now is the time for a beefed-up Office for the Internal Market, probably and preferably based in Northern Ireland, and resourced sufficiently to both monitor and deal with whatever issues arise there.

In terms of the special goods body, we do not have any information on it at this stage. A lot of the agreement that was the Windsor Framework has been operationalised at the moment without actually seeing some of these other things coming into play as yet. Time will tell about the ability of those bodies to help manage that potential issue of divergence.

Regarding the Stormont brake, in many respects the people whom I have been speaking to in business see that as a political role rather than an operational or functional role. Rather than asking us the question, I would perhaps push it back to the good Lords and yourselves to say, "Listen, how do you think that this should, could or will operate?" Certainly, people in business would prefer much more stability as to what our longer-term trading relationships will be. The risk of Stormont intervening and causing some disruption in the middle of that is not necessarily appealing. I am saying that in the nicest way that I can.

I very much see the Stormont brake and the insistence that public figures in Northern Ireland asked for Northern Ireland to have a voice in the middle of all this. It would be really interesting to find out how they see the Stormont brake operating in practice, which would give us an idea that we can assess by.

Q22 **Lord Empey:** I will start with you, Anjulie. Are you aware of any government attempt to track instances of regulatory divergence? If so, how would you assess them? Do you think that areas of regulatory divergence should be centrally logged by the Government or another

body?

**Anjulie Patel:** From our perspective, the Government have a role to play in making it as easy as possible, especially for small and medium-sized enterprises, to understand the rate of regulatory divergence, any possible mitigations or management of what may be happening, and how those are going to impact their businesses. We think it would be very helpful for our member companies to have a single portal to access that information and some detail and guidance for them to be able to digest that information.

**Lord Empey:** Are you currently aware of any activity in that area?

**Anjulie Patel:** No.

**Lord Empey:** You are not. Stephen, how do you feel about that?

**Stephen Kelly:** There was a good example just last week of someone in one of our departments sending me across an extract of EU legislation relating to those additional five areas of steel product and Northern Ireland getting its own TRQ pot. They asked me whether my members have raised this with me, whether they have seen the document and what their view of the document was. The answer to all of those was no; I do not know anybody in business who is sitting and waiting for the next piece of EU regulation, or indeed UK regulation, to drop to try to decipher what it means from the overly legal language and put it into some sort of reality for their own businesses.

From our perspective, the Northern Ireland Executive send around a regular NetRegs email that talks about the latest regulations that the UK Government, the EU and the Northern Ireland Government will be implementing. I think that is reasonably well circulated. Outside of that, I do not see a single window where traders can go and think about their particular product and see if there is any specific regulation in the EU, UK or Northern Ireland perspective that they can go and assess their own business by. Would it be helpful? Of course, it would be. Anything that corrals all this information together in one place means that you do not need to go searching multiple sources to try to find out.

More important than all that is someone, some body or some organisation that can decipher, interpret and communicate it in a language that business actually understands. That is the most critical bit in all this. Those could be structures that are part of Invest NI, and it does a good job in that area currently. It could be some of our government departments, but it should be someone somewhere who will take what these regulations mean and make it digestible for your ordinary trader so that they can assess it against what their current business model or their inputs are and see what opportunities there are to make whatever adjustments. That is more important than that single window for me.

**Lord Empey:** Stephen, you said that the Northern Ireland Executive Office sent stuff out. Are they monitoring things or are they simply

responding to proposals that are coming either from GB or the EU? In other words, where do they get this information from? It is obviously not corralled in a central place even at Stormont.

**Stephen Kelly:** The inquiry last week was from one of our departments rather than the Executive Office. I do not know where they found it. It might have been from a tweet. It might have been from some document that was sent to them, but they shared it with me. There is a role here for the Northern Ireland Executive Office in Brussels; they need to be resourced sufficiently to monitor the body of EU law that is coming through. Potentially, they will alert their colleagues in a specific department and potentially bring back the voice from Northern Ireland to ensure that, whatever regulations are coming through, that mitigation for Northern Ireland is included.

That is equally the case in London. It would be really important. I am sure Whitehall colleagues treat their colleagues in Belfast with respect and value their input, but it is even more important now that the voice of Northern Ireland that is represented by either political or administrative figures is listened to by people in the departments in Whitehall as we go forward as well.

**Lord Empey:** Nichola, I saw you nodding when Anjulie and Stephen were talking, so are you on the same page there?

**Nichola Mallon:** I am. The short answer is that it is not clear how government is currently tracking instances of regulatory divergence from the Windsor Framework. It is being tested now by CBAM, the Carbon Border Adjustment Mechanism, and how we all respond to that. That is a live test of regulatory divergence. When we asked our members where they would go to gather information on divergence of regulations applying to logistics, they said they would google it or they would come to Logistics UK or another trade association that they are a member of.

There is, we would argue, a need for a one-stop shop, a portal, that contains a live tracker and identifies relevant competent authorities for each regulation. I would emphasise the point that Anjulie and Stephen made: there is no point having the information there if it is not digestible and if it is not tailored to be relevant to appropriate sectors. With the Windsor Framework, one of the battles that we had was getting very specific information for the haulier — an end to end journey guide for the haulier – given their unique role in the movement of goods. As well as the need for a one-stop shop, the information needs to be easily digestible and particularly relevant. The last thing that logistics businesses need is to be left trawling through reams and reams of government website pages.

**Lord Empey:** Anjulie, with your sector being so complicated in its manufacturing processes, I take it that you endorse that line.

**Anjulie Patel:** Yes, and the reason we highlighted having one single, easy portal is because aerospace is impacted by the regulations in other



sectors. If we look at chemicals, if there are any upcoming changes on the EU side or the UK side leading to divergence in chemicals, that affects the movements between GB and NI, and that is something we would need to know as a sector and is quite crucial. Knowing not just where to go for aviation safety regulations and changes but where to go for anything that touches on our sectors and the wider environment would be very useful.

**Q23 Baroness Goudie:** Moving on from Lord Empey's questions, I would like Anjulie, Nichola and Stephen to answer in that order. In your view, have the UK Government and the EU done enough to make information on regulatory divergence easily accessible, whether it results from legislative developments in either the EU or GB? Further, where would you go to discover the regulatory rules that apply to your specific sector?

**Anjulie Patel:** I will repeat myself a little bit just to emphasise. For aviation safety in particular, our sector would go to the Civil Aviation Authority's website, and we are working with it to make that as user-friendly as possible. It has been very receptive of that and is committed to working with us on that. For wider information, I do not think at the moment it is as easy as it could be if we had a single portal.

**Nichola Mallon:** We touched on some of these issues in response to the previous questions, but I would add that there has been very limited engagement on regulatory divergence. That reflects how everyone's focus has been on operationalising stage 1 of the Windsor Framework and getting prepared for stage 2. It is a factual reflection of that situation I think, but it is something that we would look to see increasing as we move forward.

On a much wider point, though, on the issue of regulatory divergence we are very much looking to the future, and there are a lot of unknowns and uncertainties. It is a significant issue because divergence could have a big impact on the movement of goods in terms of trading routes, where companies locate and which markets grow, which is why we need it to be very carefully considered and managed.

From our members' perspectives, we would have four high-level asks. The first would be that we have efficient and effective structures to identify, at an early stage, potential divergence issues that need to be managed.

Secondly, that there are the cross-government processes that Stephen and Anjulie have also referred to, which ensure that regulatory divergence, if it does occur, be it active, passive or in relation to new emerging issues, delivers greater benefits to the consumer, businesses and the economy than the confusion, complexity and cost that different regulatory regimes could bring.

The third is that businesses, and particularly hauliers and the logistics businesses, which are the active mode of transport, have easy access to all the advice and guidance that they need, and that that information is

presented in the right way, learning from the experience over the last number of years about what formats work and the frequency and detail required in the information.

And fourthly, logistics businesses, and their suppliers and customers, need sufficient time to adapt their supply chains if any regulatory changes emerge.

We are of the view, in Logistics UK, that if those pillars are put in place it provides a good structural starting point in trying to get the best outcome that we are all commonly seeking.

**Stephen Kelly:** The place to start is that GOV.UK is an incredibly powerful, very useful, very accessible and digestible website. When it comes to what UK regulations are, we are well served by the Government's digital services. Certainly, that became pretty apparent during Covid, in the first weeks and months of the protocol and over the past summer with the changes that were happening with the Windsor Framework. Lots of my members looked to GOV.UK for advice and insight, because it is written, whether that is stuff relating to HMRC or agricultural bodies, in a way that people can understand. There is a very well-worn path from traders to that website, which is incredibly useful and has been very valuable.

I do not see the same in terms of the EU. There is a commitment to having a specific landing site for Northern Ireland and so on that will be accessible, but I am not aware that it currently exists. Why is that important and, secondly, can I give a practical example of this? Some very useful work has been done by the Department for the Economy that looks at the latest trading statistics available for Northern Ireland, which relate to 2021. Those were published in December last year and they will be updated again in December this year.

Specifically for my sector, the Northern Ireland manufacturing sector, it looked at the number of businesses and what markets those businesses sold to. What the department has published is that, of all the manufacturing businesses in Northern Ireland, 51% sell to Great Britain. Half of all the manufacturers in Northern Ireland sell their goods to Great Britain, so quite clearly it is a very important marketplace.

When it looked at Ireland and the EU, 61% of manufacturing businesses in Northern Ireland sell to Ireland: so 51% in terms of Great Britain and 61% in terms of Ireland. When it looked at the rest of the European Union, it is 29%, so a third of manufacturing businesses sell to the rest of the EU. Half sell to GB, two-thirds sell to Ireland, and a third sell to the EU. When you see those numbers, you begin to understand that these regulations and having a very accessible site where they can go and get a clear understanding of what the rules may well be is incredibly important.

The practical example of that, as Nichola mentioned earlier, is the carbon border adjustment mechanism, CBAM. The Irish revenue authorities on 1 October wrote to their engineering businesses and said, "You have this

responsibility in terms of mandatory reporting coming your way. Now is the time to start this process. There won't be penalties on this until 2026". The traders in Ireland were directed towards the need to report on the CBAM regulations. Of course, that became a problem for Irish businesses, and the automatic response was to talk to their supply chain and say, "This is my problem, but it's now also your problem".

They began talking to engineering firms in Northern Ireland and said, "What are you going to do to assist me with the problem I have in reporting for CBAM?" Because we do not have CBAM and the UK does not have its own system in place yet either, Northern Ireland businesses started asking questions: "We don't know what this is. We've not been advised about it. We don't know what platforms to use. We don't know what means we have to provide you with the information that you require. We don't know how to capture the information that you actually require, as well". That was common for businesses in GB as well as in Northern Ireland.

We looked on the Revenue Commissioners' site. There was no detail there. We looked on the EU site. There was no detail there. We contacted the Department of Foreign Affairs and asked it, "What advice do you give me to give to businesses in Northern Ireland?" It said, "We don't know. We're waiting for the EU to advise us". We contacted the UK Government and they said, "CBAM is an EU issue. It's not a UK issue. It's not our problem. It's their problem to resolve this for you". So everyone is going around in circles.

In the end, we contacted an online site as part of the EU—a contact site. It said to us that Northern Ireland companies are exempt from the mandatory reporting during the transition period towards the implementation of CBAM. On the face of it, it looks like we have a problem, but some people in the EU say that it is not our problem at all yet. The UK says it is not its problem; it is the EU's problem. The EU says to its member states, "We'll come back to you whenever we've worked out what this problem actually looks like and how we can resolve this".

Northern Ireland is stuck in the middle there. We are stuck in the middle at an advantageous position at this time, but it will not always be the case. That is a good example where the lack of information and mitigation in advance of implementing policies either in London or Brussels is really important. Managing this process will resolve these issues, but full consideration with either an impact assessment or a mitigation needs to be done in advance of either the UK or the EU making their moves.

**The Chair:** Can I just ask one question? You mentioned those rather interesting figures. Presumably there is some overlap between the 51% selling to the UK, 61% to Ireland and 29% to the EU. There must be some that are sending things to all three, are there not?

**Stephen Kelly:** Yes, and indeed to that, Lord Jay, is the rest of the world as well. These figures are not exclusive to selling in just those

marketplaces. You will have manufacturing businesses in Northern Ireland selling to Great Britain and to Ireland, manufacturers selling to Ireland and the rest of the world, and vice versa. But those are the percentages of businesses that engage in those marketplaces.

**Q24 Lord Thomas of Gresford:** The illustration that you have just given, Stephen, is very interesting. It shows a lack of engagement between the EU and traders in Northern Ireland, although you were complimentary about the United Kingdom's involvement in giving you advice. The problem is that, if you are manufacturing something in Northern Ireland and you want to find out what regulations apply currently, you can go to the United Kingdom Government and get some advice there or perhaps you should be able to go to the European Union and get advice, but people coming from abroad wanting to invest in Northern Ireland—and you mentioned this in one of your earlier answers—really do not know what will happen in the future with regulatory divergence at all, do they? There is a real problem there. How much engagement has there been between the United Kingdom Government and sectors likely to be affected by divergence? Is it sufficient, in your view?

**Stephen Kelly:** I will take your first comment first. You also need to add to the equation the fact that we have our own government structures and agencies here. Investors' first point of contact with Northern Ireland will likely be through Invest Northern Ireland. They will have sight across all of those. If that investment proposition moves on to more than just a piece of interest but something more substantial, they will be inviting in advisory firms, whether those are financial, accounting, economic or legal, to assist at that point, and it is their role, in many ways, to act almost like a concierge at a hotel and find the information for them, such as where the best restaurants are, what the best route to a particular location is and so on. We have our own structures and agencies to help with that process as well.

In terms of engagement with the UK Government, there is a special goods regulation body as part of the Cabinet Office, and we have engaged with it quite a lot. In fact, I think one of the witnesses sitting in front of you used to work in that team in the past. It has been incredibly useful in trying to understand what the problem is now from a theoretical point of view and thinking about how it needs to manage the process going forward.

I will repeat what I said at the beginning of the session today. Three years in, these are largely well-established laws that the UK has inherited into its own domestic law. After three years, you would expect to see quite significant problems already emerging, but none of those has. There have been some examples, but they have been managed in a beneficial way to consumers and businesses in Northern Ireland to this point.

It is important that the committee does this piece of work. I am not underplaying that at all. While there is a theoretical risk and one that may be of interest to academics and others, from the point of view of

practicalities this has been largely invisible to this point in time, and no one is going looking for those problems from a business point of view.

**Lord Thomas of Gresford:** Nichola, do you have any view on the engagement that there has been between the United Kingdom Government and sectors that might be affected by divergence?

**Nichola Mallon:** The engagement that has taken place has very much been focused on operationalising the Windsor Framework. That is where, understandably, the focus has been. We as a sector have had very limited engagement on the issue of regulatory divergence with the UK Government. As the situation evolves, we would obviously be keen to have that meaningful engagement.

I want to reiterate the importance again of ensuring that information is accessible and digestible for traders and logistics businesses. To the point that you made in prefacing your question, investors like certainty, and it is important that we also service the needs of that market when it comes to the availability of information and giving assurance around structures and processes for meaningfully managing the situation.

**Lord Thomas of Gresford:** Have there been, Anjulie, any instances of the people you represent having problems with divergence or with the information about regulations and so on? Have you come across that?

**Anjulie Patel:** At the moment, I have not. As I mentioned, it is very much a future risk, and our sector is thinking about how it could internally mitigate some of these potential risks in the future. The main issue and the current topic at the top of our members' list of issues in Northern Ireland is the access for aerospace components and parts to the green lane to mitigate the need for full customs declarations and supplementary declarations, and to have to pay tariffs on these movements. That has been the main focus for our sector.

**Lord Thomas of Gresford:** Have there been any real hiccups so far in getting information about these issues?

**Anjulie Patel:** There have not been. It is more about addressing the issues. Our sector is quite aware of what the issues are. When we talk about potential future regulatory divergence, we are in discussion with the Civil Aviation Authority on how that can be managed and handled and what the options are in that scenario. We have also been speaking to the Department for Business and Trade and the Northern Ireland Office, both at the ministerial and official level, to make sure those issues are things that we are communicating. For us, the really important thing is to continue that steady drum beat of engagement as we come up against potential issues in the future. Having those lines of communication are really important to be able to address, if not completely avoid, those issues.

**Lord Thomas of Gresford:** Presumably, the aerospace industry in Northern Ireland is importing parts from GB through the green lane.

**Anjulie Patel:** It is not at the moment, not through the green lane. Given the turnover of some of the businesses or that the components themselves are deemed at risk of moving into the EU at the moment as we currently see things, they are subject to the full customs declarations and tariffs and red lane requirement, because of the parts that are moving. If there is an opportunity to discuss further the addition of aerospace parts to the green lane or our traders being able to declare aerospace goods as not at risk—because they, in essence, end up as an aerospace part and we can track that they are going to be used on that final product and display the supply chain—it would be something that we would be interested in discussing.

**Lord Thomas of Gresford:** I had not understood that the green lane was designed for that sort of product being imported. You would fancy it if it could be done.

**Anjulie Patel:** That would be excellent.

**The Chair:** Thank you very much to all of you. That has been extremely helpful. There is a lot to think about in what you have said. We are very grateful to you for being with us today both in Northern Ireland and here in the room.