

European Affairs Committee

The Windsor Framework Sub-Committee

Corrected oral evidence: Regulatory divergence and the Windsor Framework

Wednesday 22 November 2023

4.35 pm

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

Evidence Session No. 4

Heard in Public

Questions 25 - 31

Witness

I: Alexander Kinnear, Parliamentary Officer, Ulster Farmers Union.

Examination of witness

Alexander Kinnear.

Q25 **The Chair:** Welcome, everybody, to this public meeting of the Sub-Committee on the Windsor Framework. We are today holding our second evidence session with business representatives in our inquiry into regulatory divergence. In this session, we have Alexander Kinnear, parliamentary officer at the Ulster Farmers Union. You are attending in person, for which we are very grateful. You are very welcome, and we much look forward to your evidence. Perhaps you could just introduce yourself for the sake of our audience when you answer the first question.

Today’s meeting is being broadcast and a verbatim transcript will be taken and sent to you to check for accuracy shortly after the end of the session. May I also refer you to the list of Members’ interests as published on the committee’s website?

Perhaps I could begin by asking whether regulatory divergence has had much effect on the sector in which you are involved, and, if so, what that impact has been. We will then move on to a series of more detailed questions.

Alexander Kinnear: Thank you very much for the opportunity. The last time I had an inquisition like this was when I went for my job interview, so I will be well prepared for it.

The Chair: We will try to be nicer than that.

Alexander Kinnear: On behalf of the UFU, we greatly appreciate this committee's efforts to look into a whole host of reasons and issues that are coming up. In particular, thanks to Baroness Ritchie, Lord Dodds and Lord Empey for your interest in UFU issues and concerns. I suppose we approach all these things with a glass half full. However, I think it is fair to say that we are running out of glasses, to be perfectly honest, on a lot of these issues. We hear the Government respond that help is just around the corner. Divergence is here for the agri-food sector in Northern Ireland and I have a few examples to explain that.

Broadly, to summarise, divergence has so far been negative for the agri-food sector. Of course, this has been going on from whenever Brexit kicked in throughout the period of the Northern Ireland protocol, the Northern Ireland Protocol Bill, the period in between and, of course, now we have the Windsor Framework.

Last week, I listened to the session where some described divergence in procedural and regulatory terms, and that is how I would summarise the two camps, with procedural divergence being what we are experiencing now on the back of the Windsor Framework for goods moving to Northern Ireland. Some things that we thought were resolved are not resolved, and we can come on to that later.

Regulatory divergence is a very worrying prospect for us. At a quick glance, a list of things includes glyphosate renewal from the EU, animal welfare proposals, deforestation regulations, the carbon border adjustment mechanism, which was mentioned last week, the EU animal health law and the breakfast directives, which were also mentioned last week.

Specifically, I want to draw your attention to two issues that are causing us the greatest concern currently, and one is glyphosate renewal. I appreciate people and our wider audience may not be from an agricultural background. Glyphosate—the common name for it is Roundup—has a great many uses: for weed control, and in particular for Northern Ireland's arable farmers and wider cereal sector pre-harvest desiccation. That is where you go in and you, in effect, burn off the crop to ensure that you can harvest it at the one time. Of course, with the difficult year that we have had weather-wise—2023 has been right at the top of that—the use of glyphosate has been very important.

Under plant protection products, the wider piece, to summarise, we fall under EU rules. Recently, Europe is in the process of approving glyphosate for a further 10 years. However, you will not be able to use it for the purposes of pre-harvest desiccation. Again I stress the point: if we cannot use it for that purpose, the viability of the cereal sector in

Northern Ireland comes into question, which should get alarm bells ringing.

Other EU member states—and I draw particular attention to the Republic of Ireland, which of course is a member state—are currently involved in a process of finding out whether they can get derogations from Europe to use glyphosate for different purposes. Of course, Northern Ireland is not a member state and neither is the UK, so we are completely at a loss in how we channel our efforts into a lobbying campaign or indeed request government to do that on our behalf. That is the first issue.

Another issue that I will draw your attention to, which is time limited, is the organic egg sector in Northern Ireland. There are about 35 organic egg farmers in Northern Ireland, which is not a great number. However, that industry is worth about £5 million to the Northern Ireland agri-food sector. On a wider basis, we supply 15% of GB's organic eggs. The problem has arisen where, on the back of the Ukraine war, it was very difficult to get 100% organic feed for your hens, so there was a derogation put in place where you could feed 95% organic feed and top up with 5% conventional feed. Europe has decided, and the Republic of Ireland is putting in place, that it has to go with the full 100% organic feed. We still have a derogation until about Christmas, while GB farmers will continue to feed their hens on the lesser rate.

The big problem is cost. As we supply GB with our organic eggs, if the EU regulations come into effect that GB seems quite adamant will have to happen, the viability of that sector comes into question because we cannot compete with GB farmers on that tariff, and that major cost disparity is critical.

We hear back from government specifically on that issue that it is a small sector, not that it necessarily does not matter but that it does not see why it would inject effort into that. That causes great concern on those two issues. Again, the wider plant protection issue, seed varieties and all of that is really under scrutiny with divergence.

The Chair: Thank you for those very useful examples.

Q26 **Baroness Goudie:** What impact, if any, has the agreement of the Windsor Framework had on the issue of regulatory divergence?

Alexander Kinnear: First and foremost, on a wider view, the agreement has brought divergence to the front and centre of discussions. It had been put on the long finger, if you like, until this point and we were all waiting to see what was going to come out of the agreement and what mechanisms were in it to deal with divergence. This committee here is the only representative body, as far as I am aware, that has taken this issue seriously and is investigating it. The examples that I have provided show the onus that is now on the Government to respond, and we are slightly worried that whenever we raise concerns they are not being taken seriously. The Windsor Framework means that divergence will

happen, and it will happen for everybody. I note that later questions are on specific areas of divergence.

I mentioned procedural divergence. We see that problems arise with some Windsor Framework things that are not resolved. It re-emphasises the point that Northern Ireland's marketplace is too small for a lot of GB businesses to be bothered with, and the more hurdles that you put in place, which the Windsor Framework has done to an extent—divergence puts more hurdles up—will damage supply and a whole host of things. We see that particularly going back to the arable side where there is reduced availability to our farmers of seed varieties and a whole host of things. That affects efficiency because you want to plant the best crops that can produce the best results. If you are unable to do that, you are at a disadvantage.

Q27 Lord Empey: Alexander, you have already touched on this to some extent, but what do you think are the main risks or opportunities, if any, in relation to regulatory divergence now or particularly in the future?

Alexander Kinnear: Divergence is like an assassin: we do not know when it will strike under the current set of rules. We find out a lot of this stuff second-hand. It just lands at our door and we then begin to firefight.

Lord Empey: What do you mean by "second-hand"?

Alexander Kinnear: We have our own contact base, as you would expect of a lobbying organisation. I would say that we do not hear 99.9% of our divergence queries from official channels, and that is a big concern.

Lord Hain: Did you say 99%?

Alexander Kinnear: Yes, I would say the vast majority of them are not from official channels. The risk is the possibility of the end of some sectors. I mentioned glyphosate specifically because of the arable sector. The organic egg obviously affects the poultry sector. That should get alarm bells ringing, as the viability of a sector is a huge risk. All business groups in Northern Ireland make a concerted effort to keep these things out the public eye, be diplomatic and so on, but that does not appear to be getting us very far on that issue. The first part of any problem is acknowledging that it is a problem. Have the Government moved into that head space? I do not think so.

The opportunities are harder to see but not impossible. There may be item-specific things where we can avail of EU rules or GB rules to our benefit. Those will be the big benefits of dual market access. However, that is limited. The biggest opportunity is that, without us having to do any work, divergence makes the case for an SPS veterinary agreement very clear and that unsustainable solution going forward if we do not get that deal.

Q28 Baroness Ritchie of Downpatrick: Obviously, Alexander, you have

already discussed certain issues with us from Northern Ireland. There is one that I suppose you could classify as regulatory divergence about agricultural machinery and the importing to Northern Ireland from GB. Could you talk about that issue and the potential solution?

The other issue is about the awareness and appetite of GB businesses and farmers to facilitate Northern Ireland farmers and businesses to register for Northern Ireland plant labels and to provide those washing facilities for machinery, which has been going on for some time since the beginning of the protocol. How does the impact of regulatory divergence differ between Northern Ireland and GB for the agricultural and agri-food sector, between GB and the EU, and then between Ireland and Northern Ireland?

Alexander Kinnear: Thank you very much for the question. The first issue around used agricultural machinery is a problem that is certainly growing. If it is not resolved, it will get out of hand pretty quickly. To draw people's attention to it, we assumed under the Windsor Framework when it was announced, and we took what the Prime Minister said in both the House of Commons and other appearances, that used agricultural machinery could flow freely from GB to Northern Ireland under the green lane. However, significant concerns have arisen, and this is coming directly from dealerships and businesses across Northern Ireland and, indeed, farmers. The Government have made a mistake here in how they understood the process by which machinery came into Northern Ireland. We and the FSB have put forward a solution where Northern Ireland can grant its own phytosanitary certificates. That ensures that machinery can move into Northern Ireland under the green lane.

At the end of the day, the EU has accepted that machinery can move into Northern Ireland under the green lane. However, by default currently—and this is on the back of the Windsor Framework—businesses will have to go under the red lane with huge costs associated with that, and a lot of their product will not even end up in the Republic of Ireland.

We have put forward solutions. We know the Government are, to be fair, working hard on this—DAERA, in particular—but this issue needs to be resolved pretty quickly. I do not think it is fair to say that the issue was resolved under the Windsor Framework, because more problems have arisen than were originally solved.

To the second part of your question, I suppose I would combine the Northern Ireland to GB and GB to EU stuff because it is so interconnected. A perfect example of that is the precision breeding Act that the UK Government brought forward on behalf of England. The EU has brought its own Bill on new genomic techniques. To summarise, they basically have the same purpose; however, they are coming at this from two different angles. The EU has imposed a cap of 20 genetic modifications within each plant, but the UK has proposed no cap.

Going forward, even though it is a great positive that both Governments are taking forward these types of solutions to mitigate climate change

and so on, it is very clear that English policy internally in the UK is under fire because Scotland and Wales will not implement it, and by default Northern Ireland cannot implement it because we are going with what the EU is saying. Also, if England go off in this direction of travel and the EU has not caught up with it, as England supplies a great lot of seed to Northern Ireland and indeed the Republic of Ireland, what happens there?

The GB to EU stuff is a question of how deep this sort of Brexit will go. The question that is always fired to us is whether GB will lower standards. That has been a key issue for the EU. Under no circumstances will the UK Government lower standards. I do not think consumers would let it happen, never mind political parties and things.

Another issue that will come in regarding GB-EU is the border target operating model. That will bring home the medicine that we have been taking over the past two years to GB businesses. Whenever that happens, eyebrows will start to be raised about what we have inflicted on ourselves with a lot of these rules.

As to Ireland to Northern Ireland, there is always the view that we can simply skip across the border, whether that is to get veterinary medicines or some sort of plant protection product. A lot of the time it is illegal to do that. Those systems are separate, and they are separate for a reason. Northern Ireland operates under the Chemicals Regulation Division, which operates out of Defra. The Republic has its own system. There is even a different process by which we do things. I spoke to an arable farmer just this week who explained to me the processes by which the Republic trials different varieties of seeds and plants and whatnot. That is a completely different scenario from what GB has done.

To expect Northern Ireland farmers to simply switch the tap over and go to the Republic to buy stuff is not really accurate. You cannot just do that overnight. Those three different areas is what divergence brings to the fore; they are really combined.

Baroness Ritchie of Downpatrick: There is another one. Do you have any detail on Northern Ireland farmers not being able to get the full range of seeds? I am thinking of seed potatoes.

Alexander Kinnear: On the seed potato one specifically, there is an agreement there, which we welcomed as an organisation. It is perhaps too early to say how that is going, but there appears to be a recognition that it was needed. Now, farmers will be able to plant a Scottish seed potato but harvest a Northern Irish crop that can go on into Europe, and that provides our farmers with an opportunity, as I said the last time.

The wider piece on seeds, particularly for the arable sector—and the horticulture bodies would also say this—is that, because Northern Ireland's marketplace is so small, GB is not going to run product with different labels and requirements for our benefit. The odd thing—and this is something I learned this week—is that AHDB conducts trials in Northern Ireland to see which varieties are better. That research is then

collated in GB, but Northern Ireland farmers cannot use the benefits of that research because they cannot get their seed variety in. Instead of a vast list of products, you are now reduced to main products that you can get in bulk. That is okay for feeding crops to animals, but if you are producing stuff for human consumption or some specialised malting process, you want the top of the top product and you are unable to get that. That wider seed and plant protection piece is an issue. It is very difficult to get your head around, but it has not been taken up by anybody so far.

Baroness Ritchie of Downpatrick: If you have any additional information on that, Alexander, it would be useful, through Lord Chair, if you could furnish it to the committee.

Q29 **Lord Thomas of Gresford:** Have you come up against the mechanisms of the Windsor Framework in any way or come into contact with the new special goods body or the Office for the Internal Market?

Alexander Kinnear: We have touched the surface. That is probably how I would see it. On the current trajectory, the systems that are now in place are not adequate if they are going to continue to operate how they have done. The Windsor Framework was announced at the end of February. We are now looking at December. For example, we only found out by default yesterday or the day before that the agri-food group had actually met. I assume that that is the first meeting that it has had. That worries us greatly.

Lord Thomas of Gresford: What problems do you put to that body and what do you expect from it?

Alexander Kinnear: The first thing is that we do not know what that body will discuss because a lot of its agendas are not to be published, so it appears to be very much a closed shop.

Lord Thomas of Gresford: What body is this?

Alexander Kinnear: It is a sort of general comment around those specialised bodies and the agri-food subgroup and so on. As the wording says in the Windsor Framework, we are there by invitation only. Is there an element here that, if it is a tricky subject for government, that it will invite whoever it wants to, to raise problems? That worries us going forward.

Lord Thomas of Gresford: Do I understand you to say that not only do you not know what has happened but you have no knowledge of the agenda for these things?

Alexander Kinnear: No, we have no knowledge.

Lord Thomas of Gresford: You are just in the dark.

Alexander Kinnear: Yes, we seem to be in the dark a lot of the time. The wider divergence piece is going to happen. There has always been

divergence throughout the four UK unions. That has always been a piece of it. Even if we had official pathways and channels to put our information in and get information back out, it would be something. Do we go to the Foreign Office with this stuff? Do we go to Defra or to the CRD? Do we go to DAERA to tell Defra to tell the UK mission? Those pathways are far from clear.

The Chair: They are far from clear to us.

Alexander Kinnear: I am glad to hear that.

Lord Hain: It sounds like a mess.

Alexander Kinnear: Yes, “a mess” would be one description of it.

Lord Thomas of Gresford: Could you give us some idea of the issues on which you would like to know what is going on?

Alexander Kinnear: If we accept divergence as a problem, that is the key thing. Things have to be future-proofed. In terms of EU law on the whole, if we know that is coming to us in some way—and the EU has promised to let us in on its work programme for a period of time; it will involve the Northern Ireland business community—at that point we can flag our concerns. A lot of this stuff has an indication. Is it consultation just for consultation’s sake? The EU or the UK are bound to listen to us, but they are not bound to act on what we say on a lot of this stuff, and that worries us going forward. Transparency in those groups is key going forward.

Lord Thomas of Gresford: Where are they getting their information from on the agricultural industry, for example, if not from you?

Alexander Kinnear: I certainly give them lots of information. It is for them to pick that up. They are not officially collating that information into one system and then feeding that in. Yes, to a degree, they are working with DAERA and DAERA is working very hard to collate that stuff and to process it, but it is not the competent authority in a lot of this Brexit-related stuff; it is UK government departments. There are probably too many steps within the process. People add on bits of information. They take information out and misunderstand some information. A great deal of that gets lost before it makes it to those discussions.

Lord Thomas of Gresford: Although you are sending them stuff, you do not know if they are understanding it or taking your point or anything.

Alexander Kinnear: That is it, exactly. We go out of our way to engage with Brussels, and, of course, that is all at our own membership’s expense. We are a membership organisation; we are not government-funded. We continue to go out to Brussels every couple of months. We engage with the Northern Ireland Executive Office and try to engage with Europe where we can, through our own British Agricultural Bureau. The four UK farming unions have maintained a presence in Brussels. Lobby groups doing that is fine, and of course our members expect that, but we

are not the official presence in Brussels or indeed here. The onus is on the Government to step that stuff up.

Lord Thomas of Gresford: Does the Stormont brake ever come up in any of your considerations?

Alexander Kinnear: Yes, it does come up. Initially, in the early briefings we received, we were led to believe that the Stormont brake had such a high threshold to meet that it would rarely be used. That was how it was explained to us in the early days. Specifically for us, at the end of the day, we still have to trade in the single market. We want that. That was a red line for us, and it is a lifeline to the dairy sector and the sheep sector.

Our issue is this. Albeit on the current trajectory it is not being thrashed out, in an ideal world we would like it to be before we even get to the Stormont brake stage. A policy that is affected by divergence needs an answer as opposed to slamming a brake on it.

Lord Thomas of Gresford: You want to be in on the building of a policy rather than criticising it when the policy is made.

Alexander Kinnear: Exactly: prevention is better than cure. That is probably the summary for the Stormont brake.

Q30 **Baroness O'Loan:** I think you have answered this question to a significant degree because you have talked about finding out second-hand about things, starting with question 3, but you have come back to that theme. I am tasked to ask you: are you aware of government attempts to track instances of regulatory divergence of relevance to the framework? If so, how would you assess those government attempts? Do you think that areas of regulatory divergence should be centrally logged by the Government or by another body?

Alexander Kinnear: I have probably touched on this but, to re-emphasise the point, we are not aware of a real, genuine determination within government to do it, and that is a major problem. Our conversations with government specifically on divergence are only things that we raise. Nobody is coming to us with the stuff, and I make that point with the exception of DAERA officials back home who flag things. However, they are flagging things to us and we are flagging things to them but, to come back to the point, someone higher up the food chain should be speaking to us.

Regarding the second part of the question on where efforts should be centrally logged, it is the UK Government who delivered Brexit and the Northern Ireland protocol, and they have now delivered the Windsor Framework. It is their responsibility now to deliver a mechanism to properly deal with divergence—not only to listen on divergence but to act on it and mitigate it.

Other bodies certainly have a role to play, including the Office for the Internal Market and all of that, but a lot of their remits are solely on trade and the effect of a policy, but we need to be in the step before that to get

at the actual policy. The responsibility cannot always be placed on lobby groups. That is probably one message I would like to pass on and look at this as a game that is going on. It is like a game of "pass the parcel", and the parcel is representing responsibility here. The only thing is that, when the music stops, nobody wants to be the one holding the parcel.

- Q31 **Baroness O'Loan:** I have a second question. Again, you have largely answered this, but there may be something else you want to add. Have the UK Government and the EU done enough to make information on regulatory divergence easily accessible, whether it derives from legislative developments in either the EU or GB? Where would you go to find out the rules that apply to the agri-food sector or the agricultural sector?

Alexander Kinnear: Thanks for the question. The short answer is that both sides of the coin here have absolutely not done enough to keep business up to speed. I stress that the agri-food sector is at the raw edge of all this, because we are obviously trading in the single market and we are at the coalface in terms of regulation. A great many EU laws apply to us. That is the price to pay for single market access. We either cannot find the information or it is impossible to get it at all.

I appreciate the glyphosate issue that I raised arose quite quickly, but, again, I would stress the point that this is long, medium and short term here. The processes probably are looking long term and are not dealing with anything in between. Again, we need a clear pathway to engage.

I explained that we still have a presence in Brussels. We have our own policy team and work with the Irish Farmers' Association. We are still members of COPA-COGECA, which are the farming unions of Europe. As to the point I made earlier, that is all at the expense of our farmers paying their membership to us as an organisation. We are members of the Northern Ireland Business Brexit Working Group. The unofficial stuff is fine, and primarily a big part of my job is to work within those bounds. The official stuff is currently failing.

The Chair: Thank you for that. What sort of links do you have with the office in Brussels, just for interest? We went to the office in Brussels on one of our visits. We were quite impressed by it. It has a huge amount of work to do. Are you in and out of Brussels a lot yourself, and how does it work?

Alexander Kinnear: Is this specifically the Northern Ireland Office in Brussels?

The Chair: Yes.

Alexander Kinnear: We are probably there every two months or slightly more than that, and we are very keen as an organisation, as is the British Agricultural Bureau, to build up that relationship, but it is very clear it is underresourced and that is key. One person deals with DAERA-related issues and environmental and forestry stuff. That is an incredible brief for one person going forward. Albeit Aodhán Connolly and his team are doing

their best, they are without a First and Deputy First Minister, who are the leaders of that office because it falls under the Executive Office. Without that sort of leadership, that office can only do so much.

The best-case scenario is that that office is really our ambassador to Europe. We see that as key going forward in terms of their engagement and building up relationships, and not only that but opening doors for organisations like us to get in there, but it needs to be bolstered up pretty quickly.

The Chair: Do you think that the Government here—the Westminster Government or the British Government—understand the problems or issues affecting the farming community in Northern Ireland? Is there regular contact between them and you or between other representatives of the farming sector?

Alexander Kinnear: It is a pretty mixed bag, if I am being honest. We are quite forceful, because we are a lobby group, about putting forward our points and things we want to raise. There is a general perception in the public that people do not really have a regard for food security. There are elements in government who do not necessarily treat the farming community with not only the respect it needs but the importance to the Northern Ireland economy. We are simply not just a group of hillbillies shouting about stuff; we are very much raising concerns that are here today and that are coming tomorrow.

We need transparency, we need someone to monitor this and then we need someone to take action on our behalf. I stress the point: we are no longer a member state. A lot of member states currently in Europe, as was the case when we were there, sought derogations not to get around problems but to work through them. We need to have the ability to do that and we need a working relationship with the UK Government. To be fair, when it comes to the machinery issue that arose quickly, they are trying their best, and hopefully we will come to a positive conclusion and have regular contact. At the end of the day, it comes down to whether divergence is a serious concern and is considered a serious concern within government circles and a whole host of departments.

The Chair: Thank you very much for appearing. I am sorry you were on your own. That has been extremely valuable, you have given us a lot of really helpful information and we are very grateful to you. We regard this as a very important inquiry that we are conducting, and we are very grateful to have had your input into it.