



European Affairs Committee

Windsor Framework Sub-Committee

Corrected oral evidence: Strengthening Northern Ireland's voice in the context of the Windsor Framework

Wednesday 22 May 2024

4.45 pm

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Members present: Lord Jay of Ewelme (The Chair); Lord Dodds of Duncairn; Lord Elliott of Mickle Fell; Lord Empey; Baroness Goudie; Lord Lexden; Baroness O'Loan; Baroness Ritchie of Downpatrick; Lord Thomas of Gresford.

Evidence Session No. 4

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Questions 34 - 41

Witnesses

I: Dr Stephen Farry MP, Deputy Leader, Alliance Party of Northern Ireland; Matthew O'Toole MLA, Leader of the Opposition in the Northern Ireland Assembly, SDLP.

Examination of witnesses

Dr Stephen Farry and Matthew O'Toole.

Q34 **The Chair:** Good afternoon and welcome to this public meeting of the Windsor Framework Sub-Committee. We are holding the fourth evidence session of our inquiry on strengthening Northern Ireland's voice in the context of the Windsor Framework.

We are joined by Matthew O'Toole MLA, the SDLP leader of the Opposition in the Northern Ireland Assembly, and Dr Stephen Farry MP, deputy leader of the Alliance Party. You are both very welcome, and we very much look forward to your evidence. Earlier today we heard from a representative of the UUP. We were hoping to engage Sinn Féin and the DUP later on in our inquiry, but whether there will be a continuation of the inquiry will depend on what the Prime Minister says in about 15 minutes' time. That certainly was our intention earlier on today.

Today's meeting is being broadcast and a verbatim transcript will be sent to both of you to check for accuracy before publication. Could I also refer to the list of members' interests as published on the committee's website? It is now 4.45 pm and we will need to end this session at 6 pm. That will give us time, I hope, to get through the questions that we have for you.

Perhaps I could start by asking whether you could assess for us the extent to which the voices of Northern Ireland politicians can be heard in the context of the Windsor Framework. We would like you to give us an overall view and not drill down into the more detailed questions, which we will hear later on.

Perhaps I could start with Stephen Farry, who is here with us, and then we will move on to Matthew O'Toole, who is online. Dr Farry, over to you.

Dr Stephen Farry: Thank you very much, Chair. I am pleased to be before the committee again to share some of the views of the Alliance Party on this issue.

The overall message I want to get across to you today is that the system is not working at present, and it probably could have been designed better. I appreciate that you want to go into much greater detail shortly on the Windsor Framework Democratic Scrutiny Committee's use of the Stormont brake and applicability Motions, but I will give you the broad headlines at this stage.

In essence, we have two types of process. We have the updating of existing EU law and the provision of new EU law. In both those processes Northern Ireland politicians need to get in at ground level and have a voice, particularly in Brussels, to try to shape the nature of any highlighted issues that may be of concern to Northern Ireland at an early stage. Both the Stormont brake and the applicability Motions are essentially the end of the process. It is either a yes or a no decision rather than a real ability to influence the shape of things. Often, it is in our interest to remain in compliance versus saying no to something.

We are also uncertain as to how the UK Government will respond in the case where either the Stormont brake is applied or an applicability Motion is either not tabled or not passed by the Northern Ireland Assembly.

The other point worth stressing at this stage is that, given that this is an intergovernmental agreement between the UK and the European Union, we are being advised and channelled as Northern Ireland politicians to make our voices known to the UK Government, which then represent the interests of Northern Ireland in conversation with the European Commission, rather than doing so directly.

To our mind, that is a rather elongated process. It also puts in jeopardy the accuracy of our views being properly relayed because we are relying on the intermediary of the UK Government in that respect. I am happy to expand on all those points in more detail later on.

The Chair: Thank you very much for that. Matthew O'Toole, you left us momentarily just now, but you have come back again. Were you able to hear us while you were away or do you want me to repeat the question?

Matthew O'Toole: Could you repeat the question? I think it was about the adequacy of Northern Ireland politicians' voices being heard.

The Chair: Could you assess for us the extent to which the voices of Northern Ireland politicians can be heard in the context of the Windsor Framework? We would like you to answer on a general level, because we are going to drill down in a moment or two into other more detailed points.

Matthew O'Toole: First of all, apologies for my Stormont wifi. When it comes to politicians' voices being heard, Stormont wifi is a barrier, as I am sure Stephen Farry and others would testify.

The answer to that question is, "More than before, but probably still not enough". The new provisions on democratic scrutiny, the Stormont brake, the applicability Motions and the suite of democratic routes to the voices being heard are an improvement. Since the Windsor Framework was agreed, it is yet to be proven that those mechanisms will make a meaningful difference in terms of how the UK and EU operate the framework, but it certainly has, in broad terms, improved.

That is not to say it is where it needs to be, but in broad terms it has improved. I am happy to give more views as we go through the questions.

The Chair: That is a very good start. Thank you very much, both of you.

Q35 **Baroness Ritchie of Downpatrick:** Stephen and Matthew, you are both very welcome. My question will deal with engagement. To what extent do the Windsor Framework's engagement structures enable the relevant stakeholders in Northern Ireland, such as members of the Northern Ireland Assembly, the business, civic community and voluntary sectors, to engage with EU legislation at an appropriately early stage in the

legislative process?

Dr Stephen Farry: The difference is between the formal and informal structures. Informally, the Northern Ireland Executive has a presence in Brussels. There are a number of civil servants there who can interact with their counterparts. The difficulty comes in terms of elected representatives and indeed other stakeholders who are not civil servants.

It is also worth saying that, apart from the joint committee, on which our First Minister and Deputy First Minister would have representation, the specialised committees and the Joint Consultative Working Group are at this stage largely populated, as far as I am aware, by civil servants. There would be a mixture of UK and Northern Ireland civil servants, though perhaps fewer Northern Ireland civil servants.

That goes to my point. Both the UK Government and the European Commission, for slightly different reasons, are trying to channel the discussion around updating a new EU law through the bilateral UK-EU process and do not want to see a parallel Northern Ireland political presence making representations at that stage.

From the UK point of view, they are wary of what is happening in Scotland. The Scottish Executive want to exert themselves. To an extent, we are perhaps a casualty of that. You are a veteran of this process, like me. You may recall earlier days when there was a much more free-flowing process in terms of the devolved regions to have a voice in Brussels.

From the European Commission point of view, they are very mindful about giving Northern Ireland preferential access compared to other regions within existing member states and how that complicates things. At the moment, we are being funnelled into this very narrow bilateral process. I am not satisfied that Northern Ireland's voice will be fully reflected and taken into account.

Baroness Ritchie of Downpatrick: Because Northern Ireland has that restricted access, does that impact on the ability for the Assembly and Assembly Members to do scrutiny?

Dr Stephen Farry: Yes, absolutely. To me, the key issue is not so much scrutiny as having an influence as law is being developed. We may come on to some examples in a moment, but the big one that has come down the tracks is on dental amalgams and the use of mercury in fillings.

Ideally, we want our voice to be heard right at the start of that process. It is being heard informally but not formally. Instead, we end up in a situation where the Assembly scrutinises. At that stage, it is simply either a yes or a no. What has come through is essentially a *fait accompli* and we have to decide whether it is in Northern Ireland's interests to remain aligned or to kick it into Stormont brake applicability Motion territory.

To my mind, we need to have the presence up front, where we can influence what is being discussed in terms of first principles rather than

simply picking it up down the line when it is done and dusted and we take it or leave it.

Baroness Ritchie of Downpatrick: Matthew, what is your assessment of the current engagement processes that are available? Could they be improved upon? How could they be improved?

Matthew O'Toole: Stephen has put it very well by drawing a distinction between formal and informal channels. The emphasis on the bilateral relationship between the UK and the EU is a product of a number of things, one of which is the interest on both sides that create a bias in favour of channelling engagement through those channels.

The joint committee met in the last week. Were the voices of Northern Ireland politicians more foundationally and fundamentally part of that process, there probably would have been an upfront engagement process. I am sure there were engagement processes, and no doubt officials from the Northern Ireland Executive have been in touch with the FCDO either directly or via the NIO or the Cabinet Office. I am sure that does happen.

In a more formal sense, in a way that is publicly known, that is clearly not really happening. To be honest, it is not even really properly part of the public discourse here that the joint committee happened and that it is the main forum to discuss the framework. There is still this slight divergence between the acceptance of the need for consultation in Northern Ireland and the practice of what is happening.

I also agree with Stephen that, given the nature of the way that EU legislation is developed, the best way to influence it is at the back end before a sentence of draft legislation is ever published. By that stage it becomes more difficult to influence because the interests and the text are locked down, or at least in draft form. That upfront level of engagement is critical. We have not got there yet, albeit I would say that the civil servants who represent the Executive in Brussels do a very good job, are very talented and have built really strong relationships at Brussels.

More could be done to enhance that. I hope some of that will be a product of a growing level of political acceptance at Stormont and within Northern Ireland politics—candidly, that means within unionist politics—that the Windsor Framework and protocol arrangements are going to stay. The way to shape them, influence them, mitigate any issues and maximise the economic and indeed diplomatic potential is to build relationships and engage early on. My hope would be that they can build informal networks that hopefully will lead to, at both UK and EU level, an acknowledgement that there needs to be a greater formalisation of the input.

We would go so far as to believe in observer status at the very least for Northern Ireland MLAs, MPs or both. We are an extraordinarily pro-European party, but there is still a bit of a deficit in terms of the substance of the engagement.

Some of the Windsor Framework structures that were set up—as I said, they are an improvement, in so far as they go—still lead to often very technical information coming at a devolved legislature with relatively limited means to process and understand what that legislation means, let alone influence it earlier on the process.

Q36 **Lord Lexden:** Could I ask you both to comment on the significance of the Government's Command Paper, *Safeguarding the Union*, as far as strengthening Northern Ireland's voice is concerned? How do the new bodies—there is no lack of new bodies announced as part of the *Safeguarding the Union*—fit? Indeed, will they fit successfully within the existing structures established under the withdrawal agreement, the Windsor Framework itself, and that most important agreement, the Belfast/Good Friday agreement of 1998?

Matthew O'Toole: As a framing statement, we do not support the *Safeguarding the Union* document. I am sure there are specific things in the *Safeguarding the Union* paper that are unobjectionable; there are some things that are, in and of themselves, positive things. The branding and purpose of the document is not one that we could support.

It is reasonable for Conservative politicians to say that they support the union. They do that very enthusiastically. There is, however, a trade-off in terms of their ability then to say they are operating in an honest broker way between the differing aspirations in Northern Ireland.

When a paper like *Safeguarding the Union* is published, the way it is presented, the imagery that is used on the front of the paper and a lot of the language used in the document are designed to be quite provocative, to be honest, in relation to things like the all-Ireland economy and a whole range of other things.

There are specific objections that we would have to the process that led to it. Not only was it exclusive, but it was decidedly and determinedly exclusive, in that it was a largely a bilateral process. It was an internal UK government paper based on a bilateral process with the DUP. It is for the DUP and the UK Government to comment on how those negotiations or discussions happened.

We would not feel any sense of ownership, in the sense that this is not like the Stormont House Agreement or even *New Decade, New Approach*, which were documents into which all the main parties in Northern Ireland had an input. They may not have loved or agreed with everything in those, but they had a degree of ownership of them because they were negotiated with their involvement.

Safeguarding the Union was not. I cannot speak for Stephen, but I do not think either of our parties, or indeed the Ulster Unionist Party, let alone Sinn Féin, had any input. They may have been briefed about potential content. That is the process. I will put that to one side.

There are specific new provisions. You asked specifically about some of the organisations. There are things such as the East-West Council. I do

not really know yet what the East-West Council is designed to do, other than simply improve information sharing. I do not know whether it is going to involve all the devolved Administrations because Scotland and Wales did not participate at the first meeting in March. Clearly, there is nothing wrong with better information sharing and more cohesion between those in terms of governance. In fact, that is a good thing as long as it does not infringe upon the core principles of devolution.

As I say, it is not something that was a product of an inclusive talks process. It has no standing, to be clear, in international law. We would push back against the idea that the East-West Council is a corollary to or has the equivalence of the North/South Ministerial Council. It does not because the North/South Ministerial Council is something that was created by international treaty and is therefore binding in international law. I am surer whether the East-West Council has any legal character. That is just to draw the contrast.

If it produces better working on certain things, we are not going to be ideological about opposing specific outcomes or specific good things that might emerge from it, but we have to be clear that the process was not something that we could sign up to and neither do we enthusiastically embrace or own its provisions in that regard.

The same applies to Intertrade UK, which is almost comically designed to shadow InterTradeIreland. InterTradeIreland has arguably been stymied in terms of investment and political attention over the last decade or more, rather than being left to its own devices. InterTradeIreland is provided for in the Good Friday/Belfast agreement. That is different from Intertrade UK, which is something that has been decided upon unilaterally or perhaps bilaterally at best.

I do not say that simply to pour scorn on *Safeguarding the Union*, although I have obviously poured a bit of scorn on it. If there are specific outputs that are useful, we will engage with them, but we will, I am afraid, have to be honest about the terms on which we do that. We did not sign up to and therefore we are not bound to support or uphold the provisions of *Safeguarding the Union* because we had no involvement in negotiating it.

If there are specific structures to engage with that produce positive outcomes for Northern Ireland and improve east-west relations in general or the functioning of particular bits of the devolved architecture, we have no problem at all engaging with them. We will not be ideological purists about engaging with them, but neither will we own the document and champion it, as if we were involved in its production because we were not.

As a final comment, should we get an election—maybe one has been called while I have been talking—I would hope that, assuming that there is a new Government, there is a slight change in approach in bilaterally or unilaterally producing documents like this.

Lord Lexden: Stephen, do you take a more favourable view of the Government's document?

Dr Stephen Farry: I am afraid not, no. We are probably going to overlap quite a bit in terms of our answers over the course of the session. I have probably rather cynically described the document as a glorified press release. It is very heavily packaged.

For us, the key elements are the substantive policies that are contained within. There are issues that we are concerned about. In particular, there are elements that we feel are unnecessary. The marginalisation of references to the all-Ireland economy and the island of Ireland seem to be petty. It is a reality.

Matthew has made reference to InterTradeIreland, which is a product of the Good Friday agreement. By its existence, it demonstrates that there is an all-Ireland economy. We are not pretending that the economy on the island of Ireland is identical in all respects. There is clearly a border. There are different currencies, different VAT rates, rates of taxation, different Governments and different sovereignty. None the less, there is a high degree of integration on the island of Ireland. That reality has almost been denied or downplayed in some respects in the document.

There are also some claims made in it that are, shall we say, stretching a point. I am not sure whether Lord Empey will come in from that angle later on. I see him rising in his seat accordingly. There are some claims that do not really stack up to scrutiny or do not really engage with reality. They are heavily packaged. The nature of some of the movements across the Irish Sea and how that is presented is probably the core example in that regard.

We welcome the fact that the DUP went back into office. In some senses, we have been pragmatic around the tabling of the document. We are primarily wary as to what happens in terms of the delivery.

Take the appointment of the chair of Intertrade UK. There has been a lack of transparency as to how that process has evolved. I am conscious that it involves one of your colleagues in the House of Lords. There are issues there in terms of the scrutiny around some aspects of this.

I also believe that some Whitehall departments were not even fully sighted in terms of the commitments that relate to them. The first time that they were aware they were doing various things was whenever they opened the document and read them. This was a product of an extremely closed process, not just in terms of one political party being involved in the document but in terms of the Whitehall process itself. It was an incredibly closed process where only a select number of Ministers and civil servants were involved.

Accordingly, it may not survive the stress tests because it has not really been through full scrutiny, but it is there. We will work with the bits that make sense, as we go along.

Lord Lexden: Do you want to say any more about those bits that you think might be helpful?

Dr Stephen Farry: There are commitments in there that were already going to happen, such as around defence spending in Northern Ireland. Northern Ireland gets a very small percentage share of UK defence spending relative to the population. Those things were already in train.

Lord Lexden: What about the bodies? There have been a significant number of new bodies.

Dr Stephen Farry: Yes, I tend to agree with Matthew on that particular point. We always keep an open mind on these things, but we are not entirely clear what the purpose of the East-West Council is, apart from it being a proposal that the former leader of the DUP made and seemed to want in the document. We have a British-Irish Council already, which involves the Irish Government.

We noticed that the first meeting of the East-West Council was purely Northern Ireland and the UK Government. It did not involve Scotland and Wales. If we end up simply replicating the British-Irish Council without the Irish Government, we are not really taking full advantage of east-west. Inside these islands, east-west does not just involve Northern Ireland. It involves the Southern Irish Government as well.

Q37 **Lord Elliott of Mickle Fell:** I would like to turn to the political level engagement. First of all, does the return of the Northern Ireland Executive and Assembly create the potential for further engagement on a political level?

Dr Stephen Farry: In a very broad sense, it absolutely does. We have Northern Ireland Ministers. We had two of them today for a Trade NI event in the Commons Terrace earlier on today. This week we have had the Finance Minister, the Education Minister and the Health Minister all in London, engaging with their counterparts. That is a good thing. For now, the MPs—we will see what the general election throws up in the next few weeks in that regard—can also give a voice to Northern Ireland.

I come back to the point that we started with in answer to Baroness Ritchie. While we have greater visibility and presence, we need to make sure the structures are designed in such a way to allow Northern Ireland voices to be heard and not emasculated in a detailed bureaucratic process.

It is even worth referencing—apologies if I get the terminology wrong—the UK-EU Parliamentary Partnership Assembly. Just given the sheer constraints on size and the fact it is a pan-UK body, the space to include Northern Ireland voices in that is fairly restricted. The ability of Northern Ireland to engage with the European Parliament structures is restricted.

Matthew made the point about Northern Ireland having observer status, given our particular circumstances with the Windsor Framework and our ongoing requirements in relation to EU law. That is a gap that does need

to be addressed. It is not just Ministers to Ministers. We also have to ensure that MLAs and MPs can engage with their counterparts, particularly on issues particular to Northern Ireland.

Matthew O'Toole: Again, there will be overlap in our answers, some of which are relatively obvious. Yes, it is a good thing that the political institutions have returned. Clearly, even if you think *Safeguarding the Union* is a remarkably over-the-top and objectionable document, which I do, part of the intent was to create the conditions to encourage the DUP to return to the institutions. They have now done that.

We have consociational power-sharing structures that require jointery by law and work better whenever there is cohesion between particularly the two big parties that occupy the Executive Office. I hope there can be a measure of cohesion.

I lead the Opposition now, so in one sense I have a vested interest in critiquing them, though I want them to succeed. We need to stick together and present a joint picture of, first of all, the advantages and the economic opportunities that come from dual market access under the Windsor Framework or protocol, whichever you call it, which are real and meaningful and will be best realised if we can project political stability to potential foreign direct investors. That is one potential benefit.

It is also true to say that, where there are particular issues around the application of the protocol or Windsor Framework, it is more likely that they will be resolved at, bluntly, a technocratic level, if there is relatively joined-up political representation from Belfast about the specific needs or why a particular piece of new or existing EU law should be applied in a particular way or with a particular sensitivity in Northern Ireland. It has been proven over the last number of years that that happens in a much smoother way if there is a degree of a joined-up political approach.

In that sense, the return of the institutions makes that easier because it means they are operating in a joined-up way anyway so they have a responsibility to get on with it.

Yes, it has to be a positive development. As a general point, it would be useful if people did not simply look at what the First and Deputy First Ministers say. By "people" I mean the decision-makers in London, Brussels and, where relevant, member states that are further afield, the relevant DGs in Brussels and the Irish Government. They need to look at what is being said and debated in the Northern Ireland Assembly. There is a richness of view there. It is clearly important for its voice to be heard as a legislature and as legislators, not simply in terms of the Executive.

Yes, it is a positive thing. I would hope that the return will make the operation of the framework more straightforward.

Lord Elliott of Mickle Fell: You have both touched on this already, but I am interested in the UK-EU discussions. Have there been opportunities for Northern Ireland political engagement within those UK-EU structures?

Dr Stephen Farry: So far it has been very limited because this has been channelled as a UK-EU bilateral relationship by both parties. The role for Northern Ireland politicians so far has been fairly limited, apart from using informal contacts either with the Commission or members of the European Parliament who some of us may know from different areas.

Both Matthew and I come from different political traditions, but we both have European networks of friendly political parties that we can engage with. All that is ad hoc and is not formally structured at this stage. That remains a deficit.

I hesitate to use the word “excitement”, but most of the action in the Assembly has been around a number of motions coming forward before the Windsor Framework Democratic Scrutiny Committee. There have been two debates on applicability Motions in the Assembly so far. As we have said, they have just been at the end of the sausage-making process rather than at the beginning. It is not ideally where we want to be focusing our attentions.

Matthew O’Toole: It is right to say that the engagement has been either informal or hyper-formal, in the sense that it is almost ceremonial and perfunctory; it is for the purpose of senior people going to Belfast and saying that they have met people. That is not to say that that is not valuable and important, but the substantive discussion and engagement happens at the levels between the ultra-informal contacts with people at official level and the hyper-formalised roundtable engagements or short on-camera engagements that happen a few times a year.

That could be between UK and EU decision-makers or local politicians and political parties. There is not yet routine engagement and influencing going on by Northern Ireland politicians, either as political parties, which take a different view on the EU and indeed different views on the constitution, or the Northern Ireland Executive. I do not see enough of that happening yet.

Let me give you an example of the kind of thing that should be happening. I do not know for certain, but I would imagine that the Northern Ireland Agriculture and Environment Minister, who is Stephen’s colleague, will now be having more routine and regular discussions—I presume; I do not know for definite—with his counterparts in Defra at official level who are doing the engagement with the EU in that respect. I am sure that is happening.

In addition, it would be useful for the Environment and Agriculture Minister, for example, to engage in Brussels. That does not just mean engaging directly on issues that relate to SPS rules, most obviously. You can think of the various directorates-general that he might want to be engaging with. He will want to engage with DG AGRI, but he might also want to engage with DG SANTE and Trade around potential opportunities for Northern Ireland producers.

The same would go for the Economy Minister and other devolved politicians. It would be good to get to that point where you can have strong regular working relationships to maximise the opportunities, which are not simply informal contacts or the ultra-formal ceremonial contacts, in which not that much practical business is done except giving high-level views about support or disagreement with the Windsor Framework itself or a particular EU law.

Building that level of regular engagement, particularly between devolved Ministers and, when we get down to it, the committees of the Northern Ireland Assembly would be healthy. I can imagine some people, including some of the members starting to come out in a sweat thinking about the idea of Northern Ireland Assembly committees and politicians engaging in Brussels as if we were an EU member state.

Clearly, I have very strongly pro-European views, as does my party, but, if we were able to get to that point, it would start to slightly demystify some of these structures. It would also mean that there was no excuse for not listening to the voice of Northern Ireland politicians and civic society when it came to EU law, particularly when it presented a particular difficulty or issue. I would like to see much more progress in terms of building those regular engagements and relationships. We definitely are not there yet. It is still relatively formalised.

Just finally, as Stephen said, in relation to the Windsor Framework Democratic Scrutiny Committee and the applicability Motions that have come on to the Floor of the Assembly, you could not say yet that the new structures have proven themselves to work completely smoothly yet. We are still finding our feet, and it has been fairly tentative.

Q38 Lord Empey: Dr Farry is not going to provoke me. I just wanted to follow up on the issues of the Stormont brake and the applicability Motions. We are very conscious that we are at a very early stage and there has only been very modest activity in that area.

If I may start with you, Matthew, you are there in Stormont and you sat through the two applicability Motions that have already happened. How would you assess the effectiveness of such mechanisms as the Stormont brake and the applicability Motion procedures, which are theoretically designed to enable the Assembly to have some oversight of the EU law that applies to Northern Ireland under the Windsor Framework? What are your first impressions, Matthew?

Matthew O'Toole: On the applicability Motion, one key point—it has not worked particularly smoothly yet—is notification. There are, however, many stages to it. I am testing my recall. The commission has to notify the joint committee, which then notifies the Speaker. I have forgotten which exact process it follows. My apologies, but clearly there are multiple notifications that have to happen.

In relation to the first one that we debated on the Floor of the Assembly, which was around GI for craft goods, we did not get particularly early notice of it. It appeared in the order paper very quickly. It did not pass; it

did not have cross-community consent. The subsequent one that we passed did pass with cross-community consent, which I suppose proved that we can relatively rationally debate these things. There does not necessarily need to be a battle a day or a week on them.

The broad answer is that we have not yet practised or honed processes or structures in terms of scrutinising them. The debates have not been of consistently high quality, to be honest, in terms of understanding of what the new law does. They have tended to lean fairly heavily on people's principled support for or objection to the protocol or Windsor Framework. We are not there yet. That is what I would say about the applicability Motions.

Lord Empey: Just to interrupt you for a minute, Matthew, on the two applicability Motions you said that the one on GI came in late. We have heard that from other sources. Was there a difference in the timetable over the two applicability Motions? Did you have more time to look at the one that was successful compared to the one that was unsuccessful?

Matthew O'Toole: The committee staff will probably be able to correct me factually afterwards. I am not sure there was that much notice for the second one. The second one was remarkably specific. It was to do with organic pet food. Since there are no organic pet food manufacturers in Northern Ireland, it was the most purely hypothetical update of EU law in Northern Ireland. It would have been slightly bizarre to reject it. You would only have possibly been rejecting it on the basis of a completely purist approach. It was not because we got especially greater notice.

They have both been, if I may be so bold, relatively narrow and obscure bits of law. On the GI one for craft goods, I thought there was a substantive argument that we made a mistake not to agree to it, not purely because of my own preference in favour of the EU but because there was a small potential economic benefit to our craft producers, particularly those who make Irish linen, for example, who operate on an all-Ireland basis.

As I say, the notice period was not great for either of them. It was particularly noticeable in relation to the first one because it was the first applicability Motion we had debated. I suspect it will become more of an issue when there is a larger or more consequential bit of new EU law that we debate in an applicability Motion. Candidly, people will need time to understand and get to grips with the detail of it.

If we do not have that time, if we do not have sufficient notice, it just becomes inevitable that people will default to a bias either in favour of or against the principle of the Windsor Framework. These provisions will only mature and become useful when people start to debate these things on their own merit rather than simply based on a pre-existing view.

Lord Empey: Stephen, unlike Matthew, you have not personally experienced anything, but what do you think of the potential of the Stormont brake and the applicability Motions? How would you assess the

effectiveness that they are likely to have?

Dr Stephen Farry: To a certain extent, this is still a big unknown in a couple of respects. Just to take it in sequence, the Windsor Framework Democratic Scrutiny Committee will do scrutiny of material coming through. Yes, there is an issue with the timely presentation of that information. Some of it is due to the information not being available until quite late. Another factor is that some of the areas fall under devolution and some do not. You are dealing both with Northern Ireland departments and Whitehall departments producing the material for that committee. The committee has found its role so far to be quite frustrating.

Secondly, the committee itself can do an inquiry. However, it does not itself pull the Stormont brake. It is for 30 members to sign a petition. They have to go through various mechanisms in terms of proving the case before that happens.

We are then into the big unknown as to what happens at UK Government level. The same thing applies with the applicability Motions. Before I talk about the UK role, I will just talk briefly about the applicability Motions issue. I am not sure whether Matthew is of the same or a similar opinion, but we were initially scratching our heads, going, "Do my colleagues in the Assembly always have to table an applicability Motion on everything that comes through? If so, who is it going to be? Is it going to be a Back-Bench Member of the Assembly doing it or is it going to be the Executive Ministers doing it themselves?" There was a little bit of uncertainty on that point.

On the most recent one, the Executive did sign that off, but it was the most uncontentious, as Matthew said. In a context where the Executive is divided on the issue, that may then kick it back to individual MLAs. It is a very unsatisfactory situation. The advice that we have heard from both the UK Government and the EU in particular is that there is an expectation that the Assembly will do applicability Motions.

In the context of either the Stormont brake being applied or an applicability Motion either not being tabled or not being passed by the Assembly, we are then into unknown territory. We do not know how the Government are going to interpret what is written down on the democratic scrutiny regulations that were passed in March 2023.

Particularly on the applicability Motion, there is on the surface an obligation on the Government to veto that new law from applying in Northern Ireland. However, you are then into a whole series of caveats. The same thing applies in terms of the operation of the Stormont brake.

We do not know whether this Government and, perhaps of more relevance, the next Government will take that absolutely literally. We do not know if the balance is going to mean that there are always going to be overriding circumstances where it is in the interests of the UK to maintain alignment.

I am assuming that the next Government will be Labour. Apologies if that offends anybody. In the context that they want to rebuild the relationship with the European Union, pursue an SPS agreement and look at other issues, they need to be very mindful of a situation where they are avoiding a confrontation with Europe over what may be a very discrete Northern Ireland issue at the expense of wider relationships.

Lord Empey: I will just drill down on one issue, on which we questioned Mr Butler earlier. If Matthew wants to come in on this, that would be fine. We have had a rather unsatisfactory Zoom meeting with the Windsor Framework Democratic Scrutiny Committee. The plan was that they would come next month physically to meet us, which will not happen now.

We were questioning them earlier about the resource and capacity that the committee has to deal with this. We were advised that it was set up on the same basis as every other Assembly committee, with the same levels of persons and so on. Having dealt with this for a few years in this committee, we came to the general feeling that that is not enough. It is not adequate and it is not reasonable for that committee. We felt its remit was very restricted and its capacity was very limited. Do you or your colleagues in the Assembly feel the same?

Dr Stephen Farry: In very short order, yes. It is not just like any other Assembly committee; it needs more resource. We also need more resource for the Northern Ireland Executive in Brussels. At some stage there was an indication from the NIO that it would be mindful about providing additional resource to the Assembly and the Executive to allow us to be more proactive in terms of engagement in Brussels and the scrutiny activities within the Assembly. That does not yet seem to have materialised.

The committee is under enormous pressure. It is dealing with a lot of documentation that comes through quite late. As you will well know from having dealt with similar issues, Lord Empey, the volume of paperwork can be immense. You are trying to figure out entirely benign technical updates on a whole raft of pieces of legislation and whether there are genuine issues of concern. You often rely on third-party stakeholders to draw them to your attention rather than the committee processes themselves.

Lord Empey: Matthew, what do you feel about the resource available to the Windsor Framework Democratic Scrutiny Committee? Does it have sufficient capacity to deal with things?

Matthew O'Toole: No, I do not. That is fairly clear. It has an enormous amount of paperwork. It is not justifiable for it to have such limited resource.

Having said that, the statutory committees at the Assembly, as Baroness Ritchie, Stephen and others will know, do a huge amount of scrutiny on an ongoing basis. In one sense, the Windsor Framework Democratic

Scrutiny Committee is closer to the model of a statutory committee at Stormont in any case than it is to a Select Committee at Westminster, but I still do not think it has the required complement.

That is not to say that it does not have very able people. The clerk to that committee and the EU affairs manager at the Assembly are very able and talented, but the volume of paper that they have to deal with is very difficult.

In addition to that, people are now thinking about how we will all be canvassing in the next few weeks. If you are on the Windsor Framework Democratic Scrutiny Committee in addition to your Assembly responsibilities, you can get a notification at very short notice, including during Summer Recess, of a new piece of legislation or an update that you need to scrutinise. It places very great demands on both the members and the staff. It is not well resourced.

Q39 Lord Thomas of Gresford: Matthew, I was very interested in what you were saying about the ceremonial nature of the meetings of the joint committee and so on. I recall Baroness Arlene Foster saying that in previous iterations of the joint committee she and her deputy sat there and whatever they said was basically ignored by the UK people, who were the majority of the joint committee. Have things improved in that way at all?

Matthew O'Toole: My description of the ceremonial meetings was more in relation to things like senior UK Ministers or EU officials coming to Stormont for meetings more than the joint committee itself. I have never sat on the joint committee, so I do not know whether it has improved substantively.

Part of why you need to build up the muscle memory of more regular ministerial engagement is that some of these formalised structures, a little bit like some of the meetings that happen at EU level, can often ossify into formalities rather than meetings where business gets done.

Often, the Agriculture Minister in Northern Ireland will need to be able to have regular meetings with his counterpart at Defra, which now has a significant responsibility in delivering the protocol or the Windsor Framework, and relevant DGs and indeed other stakeholders in Brussels.

In political or diplomatic terms, politicians like having meetings with photo opportunities and nice crockery, but you need to have meetings where business is done as well. I do not know whether that has improved in the joint committee. I would not be able to comment on it.

Certainly, from the information that we have received from the Executive Office, I do not have any sense that they have been engaging in much greater detail, but there has to be an emphasis on moving from the formal ceremonial stuff to more substantive working-level engagement.

Lord Thomas of Gresford: You would like to see a departmental Minister, for example the Agriculture Minister, meeting directly with a

departmental Minister in the European Commission, would you?

Matthew O'Toole: Why not? Civil servants and officials, whether from Stormont or the European Commission, are more than able to minute meetings and ensure that decisions and action points are appropriately recorded. There should not be a profound prohibition on these things happening.

If there were specific formal decisions on extending a grace period or specific changes to the protocol, clearly those would have to happen at joint committee level. They would have to be agreed and signed off in a very formal way. That does not mean that, at a working or operational level, there cannot be a much more enhanced level of engagement by devolved Ministers and their EU equivalents.

I would like to see Stormont committees do fact-finding and be able to engage. Certainly, the Windsor Framework Democratic Scrutiny Committee should be able to do that engagement. It might not be practical for every single scrutiny committee in the Assembly.

We need to build up those working relationships. We will get to a stage when more politically challenging decisions are being taken, such as the decision to add something to the protocol. There could be decisions that could theoretically be politically challenging for either side of the protocol. There will be people who are more pro-protocol and people who are more antagonistic and hate the protocol. There will be moments that are outside the political comfort zone of both of those groups.

There will be moments when pro-protocol politicians, from my party and Stephen's, will have to accept that there needs to be improvement in the way that a part of the Windsor Framework operates. There will also be moments when, for example, the DUP will have to accept that that it is in Northern Ireland's best interest that a particular EU law is updated and applied in Northern Ireland because it makes logistical and economic sense for that to happen.

Those more politically challenging or at times unappealing decisions will have to happen. Indeed, they might be politically unappealing to a politician in London or a commissioner in Brussels. For those things to become smoother, the building up of the muscle memory of engagement between officials and Ministers is a healthy thing. It does not have to be highly formalised and there need to be formal routes whereby decisions are signed off, which will largely be in the joint committee.

Lord Thomas of Gresford: Would engagement by departmental Ministers in the Northern Irish Administration be better at communicating directly and engaging to find out what is intended in the future, if the UK Government were not in the way?

The Chair: Perhaps we could have a quick answer to that one and then we will move on to Dr Farry first.

Matthew O'Toole: The upshot is yes. I have a view on constitutional change, but the UK remains a sovereign Government. They are the party to the treaty. They have to have a formal role. There is no doubt about that.

One quick point I would make is that there is already a provision in the protocol/Windsor Framework that allows for the Northern Ireland Executive to make representations to the North/South Ministerial Council and for those to be conveyed to the joint committee. There is already in the original protocol—it has not been changed by the Windsor Framework—a provision that the NSMC can make representations on behalf of the Northern Ireland Executive. That principle has already been agreed, in a sense. I forget which particular article it is.

Dr Stephen Farry: I have very little to add, Lord Thomas, except briefly to say that our experience to date is that Northern Ireland voices are a minority in all three levels of the official structures. There are reasons for that, as Matthew has said—the UK is the sovereign entity—but it is suboptimal for Northern Ireland's ability to have those voices heard.

If you go back to the wider debates around the protocol design and implementation of the Windsor Framework, one of the advantages is that we brought a lot of stakeholders together across Northern Ireland. It was not purely a governmental process. Most notably, you had the Brexit Business Working Group, which no doubt has given evidence to this committee on many occasions, alongside a whole range of other freestanding actors. Those voices have all been absolutely invaluable in terms of shaping the process. Indeed, many of them were highly respected in Brussels for their knowledge and detail.

It is also important that we bring wider civic society into the process as well. I am not sure that is currently happening in any meaningful respect.

Q40 **Baroness Goudie:** Good afternoon. It is nice to meet you both again. Is there a role for more direct Northern Ireland engagement with the EU structures, for example between the Northern Ireland Executive and the European Commission or the Northern Ireland Assembly and the European Parliament? You have touched on this, but would it be better if there was more formal contact?

Dr Stephen Farry: In very simple terms, yes. We have to be sensitive to the Windsor Framework being an intergovernmental arrangement between the UK and the European Union, but the flipside is that Northern Ireland is the entity that is most affected by this. Our distinct voices need to be heard. It is always best if Northern Ireland's voices can be heard unfiltered rather than going through a third party because they can be diluted, distorted or indeed, on some occasions, misrepresented.

There is not the openness and transparency for us to see how those voices are being taken forward. That begs the question as to the institutional design of how Northern Ireland would engage directly with the Commission and the European Parliament.

It is probably going to be easier to have some sort of observer status, as Matthew outlined earlier on, at an interparliamentary level rather than at an intergovernmental level. That also raises a difficult question for the European Commission. We should not assume that this is just one-way traffic and that we will be able to design what we want to see at our end and Europe will say, "That is fine". There are sensitivities within the European Union structures as to how that will be taken forward as well, about which we have to be very conscious.

Matthew O'Toole: The short answer is yes. There are multiple different routes. In one sense, listing specific mechanisms for engagement, as the protocol and Windsor Framework do, tends to make people think that those are the only routes through which engagement is appropriate. That is a bad thing.

In a sense, that is the product of a withdrawal agreement process, which was repeatedly at the time compared to a divorce. In a divorce, people often agree very specific visitation rights. That does not preclude people engaging, re-engaging and having multiple other ways of engaging.

As I acknowledged, there will always need to be specific mechanisms by which, for example, specific decisions are signed off about the operation of the protocol related to grace periods or anything else, but you still have no end of opportunities for engagement. To give an example, when the UK was a member of the EU, it attended the European Council at leaders level, but it also attended the General Affairs Council, ECOFIN and all the other ministerial fora where decisions are signed off. That did not stop Ministers meeting one another all the time and discussing EU-related issues. People did not think that that all had to be codified and set down.

We should be as active as possible in terms of engagement. That really argues in favour of something like observer status for Northern Ireland representatives, MLAs, MPs or both. It probably makes more sense for it to be MLAs, purely because they have the locus in terms of the operation of the Windsor Framework and MPs are elected to a national sovereign Parliament. That observer status is something that I am keen to continue arguing for. I am not under any illusions that certainly the current and possibly soon to be outgoing UK Government are going to be arguing in favour of it, but I still think it makes sense and is a reflection of our unique set of relationships.

On the way to that observer status, there are so many other types of engagement that can happen. We should be maximal in terms of those meetings. You might find, then, the formal meetings are easier, more straightforward and more harmonious because, as happened with the EU itself, you have the muscle memory of all the other engagements and all the meetings at a less formal ceremonial level.

Baroness Goudie: Thank you both very much. That is very helpful.

Q41 **The Chair:** There is just one final question from me, carrying on with the

same principle of engagement. What opportunities are available for Northern Ireland business and civil society stakeholders to engage with the UK and the EU under the Windsor Framework? How might those be improved? Matthew, would you like to go first?

Matthew O'Toole: The Joint Consultative Working Group has been engaged. My understanding is that there has been some really positive work done via the Joint Consultative Working Group. Reflecting my previous answers, while respecting the formal structures that are set down in the text of the document, the treaty, we should not limit ourselves to thinking that that is an endpoint.

As Stephen mentioned earlier on, the manufacturing, hospitality and retail collective that operates has just had its reception at Westminster today. It has done various engagements in Brussels. I would like to see much more of that at a Brussels level.

Indeed, totally coincidentally, one of their number is now running the Northern Ireland Executive Office operation in Brussels. As well as being a very able policy person, he is a very able networker. Having that level of engagement and networking with civic society, business groups and trade unions is something that would be really welcome.

If you look at how business, trade and civic society groups from all over the island of Ireland engage regularly in Washington DC, particularly but not exclusively in St Patrick's week, you get a flavour of how those informal networks can lead to positive outcomes in terms of influence and ultimately quasi-formal or even formal relationships that are healthy and positive.

A lot more can be done to simply build the muscle memory of all those things. That could be done in a way that is about better implementing the Windsor Framework. To take another example—I do not want to start speaking on behalf of Manufacturing NI or the manufacturing lobby—there should not be a prejudice against them participating in some of the business lobbying and networking events that happen in Brussels because they will have an interest in the realm of the updating of the relevant directives. I am talking in generalities, but that kind of thing should become the norm. The more it becomes the norm, the more straightforward and less heated the political dilemmas will be.

Dr Stephen Farry: I have relatively little to add. We do need to find a means of better reflecting civil society in terms of the structures. They have a very important voice to bring. They often have expertise on a lot of these issues.

It is important to bear in mind that us politicians, with no disrespect to anyone, are largely generalists, with perhaps our own interests and hinterland. Often the meat and drink of EU relations is very technical and requires a large degree of expertise. It is absolutely crucial to bring those external voices to the table. Ministers and civil servants are also frequently generalists. They may not have the same degree of depth.

Against that, we also have to recognise that some civil society groups come with a particular agenda and particular interests. We always need a filter in terms of what they are saying and scrutinise whatever they are advocating for. None the less, their voices are absolutely crucial.

The Chair: Thank you very much to both of you. You are the last witnesses that we will have before this committee as it comes to the end of three years' work. We are very grateful to both of you. Thank you very much. Good luck for the future.