



Northern Ireland Scrutiny Committee

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

Wednesday 19 March 2025

10.45 am

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Members present: Lord Carlile of Berriew (The Chair); Lord Dodds of Duncairn; Lord Empey; Baroness Foster of Aghadrumsee; Baroness Goudie; Lord Hain; Lord Lexden; Lord McInnes of Kilwinning; Baroness O'Loan; Baroness Ritchie of Downpatrick; Lord Thomas of Gresford; Lord Willis of Knaresborough.

Evidence Session No. 1

Heard in Public

Questions 1 - 16

Witnesses

I: Roderick Crawford, Senior Researcher, Policy Exchange; George Peretz KC, Monckton Chambers; Dr Clare Rice, Postdoctoral Research Fellow, University of Edinburgh.

Examination of witnesses

Roderick Crawford, George Peretz and Dr Clare Rice.

Q1 **The Chair:** Good morning, and welcome to the first public meeting of the Northern Ireland Scrutiny Committee. Whenever something is said for the first time by a member of the committee, we will declare whether we have any relevant interests. I have no relevant interests to declare.

Now for some scene setting: today, we are holding the first evidence session of our new inquiry on strengthening Northern Ireland's voice in the context of the Windsor Framework. The new inquiry will take full account of the evidence submitted to the former Windsor Framework Sub-Committee, to which we are the successor.

We are joined today by three experts. George Peretz KC is a barrister at Monckton Chambers. Roderick Crawford is a senior research fellow with Policy Exchange. Dr Clare Rice is a post-doctoral research fellow at the



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University of Edinburgh. You are all very welcome. We are grateful to you for coming. We very much look forward to your evidence. We would be grateful if, the first time you speak, you would introduce yourselves briefly.

Today's meeting is being broadcast and a verbatim transcript will be taken for subsequent publication. Witnesses will be sent the transcript to check for accuracy. I remind you that, although members will say something about their interests, a full list of members' interests is published on the committee's website.

The first question is addressed mainly to Mr Crawford and Dr Rice. Can you assess the extent to which the voices of Northern Ireland politicians, officials and stakeholders are currently being heard in the context of the Windsor Framework?

Roderick Crawford: I think that the Windsor Scrutiny Committee is facilitating the voices of politicians and, through votes on applicability and the brake, politicians more broadly. That is working well. The inquiries of the Democratic Scrutiny Committee are picking up a good number of stakeholder interests. Engagement seems to be competent. The online mechanisms that they are using to engage with people seem sound. The reports are pretty thorough. Where specific legislation is coming up for consideration, stakeholders' voices are being heard.

I am not so sure about the general functioning of mechanisms under the Windsor Framework at present, but we have the independent review, the purpose of which is to capture stakeholder feedback and experience, including from consumers, and the Independent Monitoring Panel, which will be reporting at the end of June or the beginning of July. Hopefully they will capture some of what is being missed in the Democratic Scrutiny Committee, whose remit does not run to monitoring the operation of the Windsor Framework.

The Chair: Thank you. There will be further questions later about the DSC.

Dr Clare Rice: Thank you for the invitation to be here today. I agree with the points that have been made so far. Additionally, with the novel set of arrangements that are in place regarding the Windsor Framework, we have numerous opportunities for stakeholder engagement that are not fully being harnessed at this stage. The challenge, however, with this set of arrangements, is that the arrangements are so complex that it is difficult to identify where those opportunities can be most effectively harnessed. That is one of the biggest challenges for engaging stakeholders in Northern Ireland in the Windsor Framework architecture.

The Chair: The word "complexity" may be a cue to asking the lawyer in the room, Mr Peretz, if you would like to say anything.



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George Peretz: Good morning. I declare an interest as chair of the Society of Labour Lawyers—but will give my personal views rather than wearing that slightly political hat.

As anyone who is familiar with EU law knows, keeping up to date with it and understanding what it is and how it is changing involves quite intense work, because EU law changes in all sorts of ways. It changes as a result of judgments of the CJEU, guidelines issued by the European Commission and delegated legislation. Keeping up to date with it is a major task.

A concern that I have generally, including when people talk about the possibility of alignment of EU law with the law in Great Britain, is that the process of understanding what you are hitching yourself to is a major piece of work for the Government. They will need to devote a lot of resource to understanding how EU law is developing, let alone how to influence it. I am not entirely certain that this resource is being deployed in relation to Northern Ireland, where it directly comes in via the Windsor Framework. That is a matter to be explored.

Q2 **Baroness Goudie:** Good morning. Thank you for coming. I have no interests to declare. Where does the Windsor Framework governance structure fit within the wider institutional architecture of the UK-EU relationship? How do the Windsor Framework governance arrangements interact with the existing Belfast/Good Friday agreement?

Dr Clare Rice: This is where we start to see a lot of the complexity play out in practice. The Windsor Framework governance structures are heavily built on a committee-type structure. We have the Joint Committee, the specialised committees and the UK-EU Joint Consultative Working Group. These bodies allow that EU-UK engagement to happen in a formalised setting.

However, a lot of those conversations happen behind closed doors, making it difficult at times to understand what is happening. We get readouts after the meetings that give a general overview of what is happening but do not go into a lot of detail. There is a challenge there in terms of understanding what these committee architectures are doing: albeit that they are so central to the architecture of the Windsor Framework and how it works in practice, they are fundamental bodies in and of themselves. An issue needs to be addressed around the transparency, broadly defined, of what these committees are doing day to day.

Thinking along the lines of the Windsor Framework, regarding how that overlaps with the Belfast/Good Friday agreement and the institutions that stem from there, there is an element of trying to direct attention towards the three strands of the Good Friday agreement, looking at the institutions in Northern Ireland and thinking in terms of north-south, east-west, and at least the spirit of those arrangements, if not necessarily the bodies themselves.



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The broader question of stakeholder engagement in Northern Ireland—and I use “stakeholder” to refer to politicians as well as broader civic society and businesses—is a question that needs a multifaceted approach. That has been effective at times throughout the post-Brexit period. At times it has not been so effective, but it needs to be more effectively and more usefully harnessed going forward.

This is where we also start to look at the bodies that are stemming from the ‘Safeguarding the Union’¹ arrangements as well, building on that broad idea of the spirit of those three strands of the Belfast/Good Friday agreement. The significance of that is that it makes it an arrangement that is to an extent familiar within Northern Ireland. It is something that people are aware of as an architecture that needs to be engaged with in a particular way. It pegs the unfamiliar to the relatively familiar for Northern Ireland, but it still comes with the challenges of how you operationalise that.

The Chair: Can I narrow down what you mean by a “multifaceted approach”? Does that mean that people should be given more information about what affects them—for example, if a trader is affected by the Windsor Framework, there should be more information so that that trader in their industry knows what they need to do?

Dr Clare Rice: I certainly believe that, in some quarters, there is a lack of effective communication about what specific stakeholders are to do. Using the example of a trader in Northern Ireland, there are opportunities where more effective communication would help, not just in terms of understanding the framework that is in place but in the day-to-day implications of what that framework means for individuals, bodies and stakeholders in the context of Northern Ireland.

Roderick Crawford: Picking up from Dr Rice’s point, there are obviously transparency problems with the UK-EU Joint Consultative Working Group. One of the later questions might be dealing with that. Is that right?

The Chair: Yes.

Roderick Crawford: That seems to be a real problem. As to where it sits within the overall EU-UK relationship, obviously the UK-EU Joint Consultative Working Group sits under the Joint Committee, which sits alongside the arrangements governing the TCA. It is all just part of a broader EU-UK relationship. I do not see problems with the UK-EU facing element of the structure. It is more Northern Ireland’s ability to engage with that at the UK level that is problematic. We will speak more about that when we come on to the specifics.

On engagement with the Northern Irish institutions that were established by the Good Friday agreement, clearly strand 1 is the key area of engagement—the Assembly and the Executive. Obviously, that is the

¹ <https://www.gov.uk/government/publications/safeguarding-the-union>



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Democratic Scrutiny Committee as well. It enhances the Assembly and the Northern Ireland Executive's role more generally in Northern Ireland's economy and society, which is a big benefit, and not just in addressing the democratic deficit. It is a big gain.

I do not see much of a role for the North South Ministerial Council. The rotocol, as originally conceived and without any loss in any of its iterations since then, holds fast the security of north-south co-operation beyond anything that was needed at the time. The intergovernmental strand does not seem to be the right place to be engaging in what is a UK-EU arrangement, and from the readouts of the last few meetings, it does not seem that they have done so. They may, but I suspect they will not. It is all strand 1. That is where it all hinges.

George Peretz: The committee will know, although some readers of the transcript may not, that the wider institutional architecture of the UK-EU relationship is correctly characterised by two pillars. You have the Trade and Co-operation pillar and the Withdrawal Agreement pillar. Those are entirely separate. The reason is probably well known to everyone in this room. It is to do with the history of the matter. The Withdrawal Agreement was negotiated first, followed by the EU-UK Trade and Co-operation Agreement. The legal basis of those in EU law terms is different—the Withdrawal Agreement, Article 50 and the Trade and Co-operation Agreement and the general powers of the EU to conclude trading arrangements. They are entirely separate agreements.

However, arrangements reached under one pillar can impact the second. An obvious example is that the Labour Government declared in their manifesto the aim of reaching an agreement with the EU on sanitary and phytosanitary products. These are essentially rules on food and agricultural products. To the extent that this agreement is reached with the EU, whether under the current terms of the TCA or a variation of it, it will have a practical impact on arrangements under the Windsor Framework, because the more the rules in Great Britain are harmonised with those of the EU, the fewer problems there will be on those aspects of the Windsor Framework that govern the movements of food and agricultural products.

The Chair: Thank you.

- Q3 **Baroness Ritchie of Downpatrick:** Good morning. I declare an interest as a member of the board of Co-operation Ireland. In our previous iteration in the former Windsor Framework Sub-Committee, people who gave evidence suggested that you had to have early engagement with EU legislation—that is, the stakeholders. To what extent do the Protocol's or the Windsor Framework's engagement structures enable Northern Ireland stakeholders to engage with relevant EU legislation at an appropriately early stage of the legislative process? Mr Crawford, you have mentioned the JCC. Can you talk around those areas?



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Roderick Crawford: I have listened to some of the witness sessions of the previous committee. The idea that Northern Ireland can engage at early stages of the EU legislative process is not very realistic. You have to be inside the EU system, the Parliament and the Council, sitting on Coreper and all the rest of it, to have any handle on the development of EU legislation.

EU goods regulations will apply in Northern Ireland and will come out as decided by the EU's own system, without any influence from Northern Ireland or the UK. A caveat would be where legislation on customs, or something which clearly steers across the bows of the Windsor Framework, might be in the pipeline. There, the UK Government, on behalf of Northern Ireland as well, would be able to engage with the EU. However, on general goods regulation, there is no role. The facilitations there are for a brake on amending or replacement legislation, or some part of it.

The system is designed to uphold the Windsor Framework, as agreed, to ensure that goods can move from GB to NI.

The Chair: On that point, I bring in Lord Hain.

Lord Hain: Thank you. I was the Secretary of State for Northern Ireland, if that is an interest to declare. Can I just clarify what you were saying? Were you referring to the formal structures of the EU with Coreper and so on? What about unofficial informal consultations, possibly via the Northern Ireland Office in Brussels, to give early warnings to the legislative body in Stormont?

Roderick Crawford: The other side to that is taking the EU's work programme for the year and looking at what might be in it, what might be coming out and keeping a close eye and ear on what is coming down the pipeline. That gives you forewarning of, but not influence on, how that legislation might develop. I do not see why goods made in Northern Ireland would normally get exemptions from EU goods standards, since they will be legally able to circulate in the EU single market under the UK-NI designation. It is hard to see on what basis that that might occur. There does not seem to be much occasion for it.

The Chair: Mr Peretz, surely Northern Ireland traders, for example, should be able to know what is coming down the road towards them? To achieve that, should there not there be some kind of structure, whether formal or informal, that enables them to make representations before mistakes might be made?

Roderick Crawford: Yes, I think the system as set-up is more communicative of what is coming, rather than engaging on what shape what is coming should be.

George Peretz: I refer to the point that I made earlier about the importance of devoting resource to keeping track of what the EU is doing.



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That resource is legal, it involves having people on the ground in Brussels, people who—to be slightly flippant—are capable of taking people out to lunch. All this matters.

It's no coincidence that Norway and Switzerland, which in their different ways end up importing large quantities of EU law but do not have a formal say in any of the EU legislative frameworks, both have very large missions in Brussels which are very active.

Both those countries—and Iceland and Liechtenstein, but they are rather small—it would be worth co-ordinating with, learning from and talking to. They have a lot of experience over a long period of monitoring, to some extent informally. I agree with Roderick Crawford that there is very little formal mechanism, certainly with Switzerland, to influence EU law, but informally they can lobby. It is sometimes a question of lobbying not in Brussels but in Paris, Berlin or even Ljubljana.

Baroness Ritchie of Downpatrick: Obviously that is possible. But who would execute that form of engagement—is it political representatives or business representatives—to reflect that necessity for involvement of people, and for them to paint the picture of the issues that this legislation or potential legislation could present to businesses?

George Peretz: I suppose probably both. I am no great expert on how diplomacy and lobbying happen in Brussels. My job as a lawyer is to deal with what comes out of the machine rather than understanding the political processes that form part of the machine. Of course, Brussels is full of business lobby groups of one sort or another, including—I would imagine, although I do not know—Swiss business organisations and Norwegian business organisations which will want appropriate moments to try to influence what is going on.

The Chair: I turn to Dr Rice.

Dr Clare Rice: I have to take a bit more of an optimistic approach than that outlined by Roderick on the extent of the potential influence that Northern Ireland could wield in Brussels. In today's discussion, we have touched on the idea of the so-called Brussels bubble, where being present on the ground and being able to actively engage, by and large, in informal ways—exerting a sort of soft power—can wield results. I am not trying to suggest that Northern Ireland has the power to reinvent the wheel, so to speak, for the EU's legislative agenda, but being able to have the conversations and interactions that inform the thinking of the individuals involved in that legislative process is a very important way to do that.

As was mentioned, we have the Office of the Northern Ireland Executive in Brussels. We know that there are bodies from the Northern Ireland business sector that frequently engage with Brussels. We also have the lines of communication with the Irish Government, through Dublin, which feed into the conversations. So there are a few different angles from



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which Northern Ireland can contribute to these conversations. We should not underestimate the extent of influence that Northern Irish voices can have, when appropriately channelled through those avenues.

The Chair: Thank you. I turn to Lord Dodds, and then we will move on to the next question. We will come back to these issues later through other questions.

Q4 **Lord Dodds of Duncairn:** On the point about Northern Ireland influence, the EU is making goods regulations for the whole of Europe. Are there any examples of areas, regions or countries having carve-outs from regulations within the EU because of particular circumstances? Is it not the case that these regulations apply right across the board in virtually 100% of cases? Do we not need to be realistic about the extent to which these things will change as a result of the lobbying of a very tiny region that is not even part of the EU? I throw that question back to Dr Rice.

The Chair: Mr Peretz looks as though he wants to respond.

George Peretz: I cannot put my finger on it, but at the moment one can find examples, in some areas of EU regulation, of specific provision being made for specific products. An example at the back of my mind—I think I came across it in some litigation about 10 or 15 years ago—is around the sanitary and phytosanitary regulations. You sometimes find particular provision being made to protect a particular traditional product made in a particular part of the EU.

There are examples. As somebody who reads regulations, I can say that those examples tend not to matter very much for my purposes, so I glance over them, but I can certainly think of provisions that you sometimes find towards the back of regulations that make specific provision for particular areas of particular concern. You might have a different regulation for the Azores, for example, because of its peculiar geographic position. It certainly can be done.

Lord Hain: Sorry to interrupt. Is this the Parma ham and Champagne situation?

George Peretz: You may have a regulatory decision about the minimum content of something in a particular product, and a member state says, "Hang on a moment. That would mean that the product that is traditionally produced in a particular region of my state would no longer qualify". Sometimes the way of dealing with that is just to insert a specific provision. You get examples of that.

The Chair: Wine springs to mind—as does Welsh agriculture, given my history as a Welsh MP. It would be interesting if one of you could provide us with a list of carve-outs of that kind. I think you may have volunteered, Mr Peretz.



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George Peretz: I will do my best. I suspect that there is no list of such things anywhere, but I might be able to find a couple of examples.

The Chair: Thank you very much. Let us move on to the next Question, because we will come back to those issues. I turn to Baroness O'Loan.

Q5 **Baroness O'Loan:** Thank you, Lord Chair. I have no interests to declare. We have already heard a number of references to the complexity of the structures for communication and engagement. Should these structures and mechanisms, through which Northern Ireland stakeholders can engage with the Windsor Framework, be simplified or rationalised? If so, how? If not, why not? I would like to start with Dr Rice.

The Chair: This is a major question for our inquiry, Dr Rice.

Dr Clare Rice: The routes to stakeholder engagement certainly need to be clarified within the context of the Windsor Framework. There is almost a latent assumption that it is up to the actors within the committee structures, and within the architecture of the Windsor Framework, to reach out to stakeholders. There is an inherent problem there, insofar as it raises questions around who the people involved are, why they are being selected, and, crucially, which voices are being missed in that process. So there is a much stronger one-way relationship that has developed with the architecture of the Windsor Framework when it comes to engaging broad voices. Again, I am using "stakeholder" in a very broad sense here to explain this. In contrast, we need to have more clarification and communication around what those structures are—if not in basic terms, in terms that are much more simplified than what we have seen coming forward over the past few years. We need much more direct communication with organisations, business bodies and civil society groups to explain how all these complex structures operate, not just as stand-alone bodies but with each other. We need to work with those stakeholder groups and bodies to try to identify how they are most able to utilise their resources to get involved and to get their voices heard within the structures. There are numerous opportunities for that, and there is an important need for that to be clarified going forward.

To build on the point that Lord Dodds made at the end of the last question, this is not necessarily a case of reinventing the wheel, so to speak, for these processes; it is about ensuring, from a basic democratic perspective as much as anything, that the broad range of perspectives within Northern Ireland, in all the guises that they may take, are fed into all of these processes. That is so significant because, if you can do that as early as possible in the processes—be that through policy development coming from the EU side or broader conversations happening between the UK and the EU—that mitigates the potential for challenges and issues further down the line. It is an important step to identify, and it is important that those streams of communication are clarified going forward.

The Chair: Mr Crawford, can you focus on the "If so, how?" part of



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Baroness O’Loan’s question?

Roderick Crawford: As Dr Rice said, there is a real problem if you are a stakeholder. In other words, if you are an operator or a business, and you have issues under the Windsor Framework, where do you go with your problem and where do you go with your solution? I would have preferred to see the Independent Monitoring Panel have a wider remit than it does. It could have been a central place where the people who are, in effect, operating the mechanisms under the Windsor Framework could maintain a when-necessary or continuous engagement on problems and solutions.

There is no body out there that has a phone number, email address or permanent secretariat that you can contact or has a front door that you can turn up at, and that is a serious problem. We know nothing about the Joint Consultative Working Group or the specialist sub-committees; they do not have a phone number or a website. The Independent Monitoring Panel could perform that kind of function, perhaps picking up after the independent review has completed its work. Obviously, we are all looking to the independent review to finesse the arrangements, but I also hope that it might be able to point the Independent Monitoring Panel in a broader direction, picking up, in a way, from its own work.

The Chair: For anyone reading this or watching online, that is a reference to Lord Murphy of Torfaen’s independent review, which will be completed in a few weeks’ time. Mr Peretz, do you want to add anything?

George Peretz: I do not have anything to add to that.

Q6 **Lord Lexden:** I have no relevant interests to declare. Mr Crawford referred to the crucial issue of the lack of transparency. Perhaps he would like to lead the comments from our experts on the extent of the problem and what should be done about it.

Roderick Crawford: The UK-EU Joint Consultative Working Group publishes its agenda, which is normally a five bullet-point thing—the co-chairs welcome everybody, something, something, stakeholder engagement and any other business. That is what appears every time they have a meeting the day before. On the day following the meeting, they publish the UK-European Commission joint statement, which is normally four or five paragraphs long, very general and might mention a couple of things that they have looked at, such as VAT and excise or agri-foods.

We will then reiterate the importance of engaging with Northern Ireland stakeholders. It is more or less the same sentence, copied and pasted into each statement, which makes one slightly chuckle. However, there is no transparency, with no indication of what impact any engagement has had. Reading between the lines, one senses that there may be officials from Northern Ireland in the room, but no other stakeholders are present. There are also the specialist committees, where the greater part



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of stakeholder engagement is supposed to take place, reasonably enough. There is no transparency at all. There is no published agenda, no statement of what occurred, no list of who attended, nothing at all. At the level of stakeholder, the transparency is as close to zero as you can imagine.

The Chair: Mr Peretz, in our predecessor's sub-committee's evidence, Mr Martin Howe KC argued that the lack of transparency makes it difficult to assess the representativeness of the stakeholders who are being consulted. Do you agree with that, and would you like to develop on it in any way?

George Peretz: It is difficult to disagree. One aspect of transparency that I would emphasise as a practising lawyer, and which this committee or its predecessor has made previously, is that it would be helpful to have rather better databases which set out the EU law that is applicable in Northern Ireland. The EU has produced one, but it was not endorsed by the UK Government the last time I looked.

It would be very helpful to have all that information together in an agreed form that one could rely on safely in court. There are slight dangers in relying on something which is only approved by the EU in court. It is convenient for practising lawyers, but if practising lawyers cannot understand the law, the businesses that they advise cannot understand the law either. It is not just a matter of lawyers' convenience.

Baroness Ritchie of Downpatrick: Should that be a function of the Cabinet Office on a rolling basis, to keep a databank of EU law and its applicability to the Windsor Framework, to Northern Ireland and specific areas?

George Peretz: It is the sort of cross-cutting government function that might sit in the Cabinet Office and in the Northern Ireland Office.

The Chair: Dr Rice, do you want to add anything on this question?

Dr Clare Rice: On the broader point about transparency, what came to mind was the European Commission's statement of February 2023 around enhancing stakeholder engagement with businesses and organisations in Northern Ireland.² A number of the measures that were outlined in that have not really been dealt with.

One of the content points was around the idea of a protocol website that would outline various initiatives from the European Union side, that would be essentially a database where stakeholders in Northern Ireland would be able to access and gather that information. The last time that I looked at that website, it had not been updated to include that sort of information.

²<https://commission.europa.eu/system/files/2023-02/statement%20stakeholders%20engagement.pdf>



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There is a written-down commitment to the idea of stakeholder engagement, certainly from the European Union's side of things, but the translation of that into practical outworkings and into reality seems to have stalled somewhat. A revisiting of some of the things that have been at least suggested, if not indeed committed to, by the UK and the EU with regard to these communication streams, would help to identify what has been outlined and where those suggestions could be more effectively structured, now that things are up and running and starting to bed into place a little more.

Baroness O'Loan: Listening to you, I am taken back to the evidence which we received previously about stakeholder witnesses, particularly in industry. They were going ahead and identifying solutions to problems which existed in terms of import/export and that sort of thing. They had nowhere to go with those solutions and nobody was listening.

We are hearing of officials talking to officials talking to officials, nothing coming out and therefore no development, with frustration developing, certainly in industry in Northern Ireland. There is also concern about the possibilities. I do not know if there are even terms of reference for the sub-committees on the UK-EU Joint Consultative Working Group. I do not think that we have seen them. We would need to know what they are there for. Do they exist and have they met? Even that level of transparency does not exist. What can the committee ask to be done to enhance that situation, to improve it?

The Chair: That is a very important question. It lies at the centre of our inquiry. If the witnesses would like to send us in a short, written response to that last question, it will enable us to consider it at leisure.

Q7 **Lord Dodds of Duncairn:** I have no relevant interests to declare. Coming on to more specific issues, I want to ask about the effectiveness of the Stormont brake and the applicability motion procedures.

The Stormont brake was greatly hyped up at the time of the Windsor Framework by Rishi Sunak and others, who were saying that Stormont could stop EU laws and so on. We have seen recently that the Government did not proceed with the brake after the Assembly had passed it. On the applicability motion, one has been passed there as well to stop geographical indicator legislation applying in Northern Ireland.

I am interested in your views on how effective it is, how it has lived up to its hype and how you see it operating in the future.

Dr Clare Rice: That is an interesting phrase: "the hype at the time". It was very much overplayed, the extent to which it would enable Northern Ireland's politicians to intervene with regard to EU law.

It is certainly a positive thing to have in place, in so far as it gives an opportunity, at the very least, for concerted and focused conversations to be happening within the context of the Northern Ireland Assembly around laws that fall within the scope of the Stormont brake itself. That is an



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opportunity that would not necessarily have been there to the same extent, certainly not beyond the parameters of the Democratic Scrutiny Committee, without the Stormont brake procedure being there. There is a value to it being there, but we saw the Stormont brake triggered towards the end of last year and not taken any further by the UK Government.

Essentially, it showed that it allows politicians in Northern Ireland to voice concerns and pull together all the various stages and elements of it that need to be met, inclusive of showing an element of stakeholder engagement in that process. However, ultimately, if it goes to the UK Government and they decide that it is not feasible to be taken forward as a point of concern, that is a roadblock. This has been a consistent concern and pattern with some of the mechanisms stemming from the Windsor Framework, in terms of what they are and what they do within the Northern Ireland Assembly. When push comes to shove, the power ultimately still rests with the UK Government for taking things forward. There is a benefit to having it within the structures of the Northern Ireland Assembly, but there is a bigger conversation to be had on its overall effectiveness within the broader UK-EU conversation.

It also has to be said that, indirectly, the Stormont brake also offers—I am not advocating its overuse by any means, in case it comes across as such—a means for issues that are seen to hold particular significance for parties in Northern Ireland to keep them on the agenda with the UK Government. Given that other institutions and east-west relationships and bodies have lapsed with the post-Brexit arrangements, the Stormont brake allows for a route of communication that might not otherwise be able to succeed. So it is good that we have it, but there are certainly conversations to be had around how it can be enhanced. The way it was presented when it was first established gave the suggestion that it would be able to achieve more in reality than what it is actually designed to do.

The Chair: Thank you. Before I ask the other witnesses to respond, Lord Thomas of Gresford wants to ask something about this matter.

Lord Thomas of Gresford: Dr Rice just said that the Secretary of State for Northern Ireland retains the power. That is because of the way in which the Secretary of State can meet an application for the Stormont brake to be operated. In the January case, the Secretary of State did not agree that the amending regulations would have “a significant impact” on the “everyday life of communities in Northern Ireland in a way that is liable to persist”. There are a huge number of subjective things in that, so the opinion of the Secretary of State applying those criteria is absolutely paramount.

The Secretary of State is put in a position either to disagree with or to upset those who are applying for the Stormont brake to operate—by trying to pull the lever—to avoid the Secretary of State falling out with the European authorities. Do you think that the Stormont brake will ever be applied when there are such subjective criteria? Mr Crawford, can you answer first?



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Roderick Crawford: I will take that all the way through. I am not sure that the Stormont brake was quite as mis-sold as all that. In press releases and TV appearances, you tend to get the soundbites, but the Windsor Framework Command Paper actually sets quite a high bar. I reread the Windsor Framework because I was coming here today. It specifically mentions—as Lord Thomas of Gresford alluded to—“a significant impact on the day-to-day lives of businesses and citizens”. It is hard to imagine any goods regulation that would have a significant impact on the day-to-day lives of businesses and citizens. Clearly, there are two parts to the test. One is that it is significantly different from a new rule, whether in content or scope. That is often the case. The Democratic Scrutiny Committee has done, I think, nine inquiries on EU legislation. On most of them, it has assessed that it differs significantly—why else would the European Union issue an amending Act or a replacement Act?—but it is very rare that it will have a significant impact on the day-to-day lives of businesses and citizens.

It is interesting that the Windsor Framework lists the kinds of things that it expects, beginning with EU customs regulations. You can see how a change in the Union Customs Code, which could have an impact on movement between GB and NI, could potentially interfere with the workings of the Windsor Framework. The brake is there, fundamentally, to ensure that the Windsor Framework does not get compromised by EU legislation that accidentally ends up undermining something that we have carefully negotiated with the EU—that is the big picture. The big picture of the Windsor Framework was to secure the place of citizens and consumers in the UK’s internal market.

Q8 **The Chair:** Thank you. I want to bring in Mr Peretz. The phrase “judicial review” is ringing in my head. How judicially reviewable do you regard decisions such as the one made by the current Secretary of State under the Stormont brake procedure? Do you have any other comments to make that might help us?

George Peretz: I will make three comments. First, it is inevitable that the Secretary of State has to have, in a sense, the final say here. Ultimately, this is a matter that engages the international responsibilities of the United Kingdom, so the United Kingdom Government will have to deal with the consequences of invoking the Stormont brake. There are indeed consequences of invoking the Stormont brake: one is that there may be EU remedial measures, and another is that there may be an invocation of the dispute resolution mechanisms in the withdrawal agreement.

That brings me to my second observation. Lord Thomas pointed out that the criteria applied by the Secretary of State are subjective. Certainly, one could see that, in a lot of cases, there will be room for quite deep argument on either side as to whether the criteria are met or not. Ultimately, however, these are judgments that may have to be reached by a dispute resolution mechanism, which might have to rule on whether a particular legislative change had “a significant impact specific to” the



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“everyday life of communities in Northern Ireland in a way that is liable to persist”. I perfectly accept that, in many cases, there will be room for argument about that; however, although I cannot think of an equivalent provision in the WTO agreement or other international trade agreements, it is the sort of provision that, under those agreements, is sometimes subject to international dispute resolutions of various kinds—and, by and large, it is dealt with.

So the fact that there is room for a lot of argument about whether it applies does not mean it is unjusticiable. You can imagine a court reaching a view on the basis of evidence and a legal interpretation of the terms that would read as a perfectly sensible legal judgment. Views can legitimately differ about whether that is the sort of case that a court should decide on, but it is capable of deciding on it. It seems to be clear that it is not unjusticiable.

That brings me back, finally, to Lord Carlile’s question about whether the Secretary of State’s decision—not to pursue an application of the Stormont brake because, in his view, it would not have “a significant impact specific to” the “everyday life of communities in Northern Ireland”—is subject to judicial review. In principle, it would be. The fact that that provision could be justiciable in a dispute resolution mechanism makes it likely that a UK court—or, presumably, a Northern Ireland court in this context—would accept, at least in principle, if it was convinced that the Secretary of State’s position was not correct, that it could rule that it was incorrect in law. Inevitably, in that sort of area, the court would allow quite a lot of discretion—or margin of appreciation; there are various other words that public lawyers like to use—for the Secretary of State. It would not simply have no regard to what the Secretary of State’s views were and decide on it itself. Ultimately, the court would have the power to say, “No. We think there is no basis on which the Minister could reach that conclusion”.

The Chair: Thank you, before I bring in Dr Rice, Lord Dodds wanted to make a point.

Lord Dodds of Duncairn: I will ask a follow-up question. We have been talking about the hype at the time. I too revisited what Rishi Sunak said on 27 February 2023: “the Stormont Brake ... means that Stormont can in fact stop” EU law “from applying in Northern Ireland”. There is no doubt about the hype and overselling at the time. That is one of the problems that we face now politically—because this is a political problem. I venture to say that the Stormont brake and the applicability motion were political issues that were not really designed to work. That is why we have the high threshold. I would have thought that people looking at this would look at it in that context. Because of the very high threshold, it was never really designed to operate. We will find very few instances of it actually operating in practice.

The Chair: Dr Rice, do you have a point to add?



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Dr Clare Rice: I do indeed. I am glad that the point there was made, because it relates to my point. When I talked about the overhyping of the Stormont brake at the time of the Windsor Framework, it was very much how it was communicated to the wider public that I was referring to. When you look at the black-and-white text on the pages of the document, you see that it is a much more complex operation than was communicated more generally. The difficulty is that it then set an expectation in the wider population in Northern Ireland that it could do a lot more than it ultimately was able to do.

When the Stormont brake was triggered at the end of last year, it was a bit of a disappointment, because suddenly the reality of the complexities around it came to the fore. It then created a tension in terms of how the role of the Secretary of State and the UK Government was viewed regarding Northern Ireland's democratic consent processes more generally. That needs to be very carefully managed going forward, because this relationship needs to be maintained and kept on good terms, particularly thinking through the prism of stakeholder engagement going forward. If there is a wider public perception that this is a tainted relationship, that will herald a whole host of problems for governance in Northern Ireland more generally going forward.

George Peretz: Anyone who is familiar with arguments about constitutional law and this sort of constitutional provision knows that it is slightly dangerous to assess the efficacy and importance of a veto or brake power by looking at how many times it has been successfully used. A really successful veto or brake power will often never be used, precisely because it sits there.

In this context, the cash value of that ties back to our earlier observation. One would hope that the existence of something such as the Stormont brake would be a lever which could be used before legislation has taken a final form, after which it can be difficult to get the EU to change it. At an earlier stage, going to the responsible EU legislative body in all its different formations and saying, "Look, there could be a problem here in relation to Northern Ireland, is there anything at this stage that you could do to avert that possibility, perhaps by making specific provision for Northern Ireland?" might be where the brake could be used.

The value of the brake may over time not be the extent to which it is used but the extent to which the UK diplomatic negotiators in Brussels can raise the possibility of the brake being used, as a way of getting EU legislators to listen in circumstances where they might not otherwise have done so.

Q9 **Lord Empey:** Good morning to our witnesses. I have no relevant interests to declare. What is your assessment of the role and function of the Northern Ireland Assembly's Windsor Framework Democratic Scrutiny Committee? Is it receiving the necessary support and information from the UK Government?



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Dr Clare Rice: I do not think that it can be overstated how important it is to have this committee within the structure of the Northern Ireland Assembly. It is a body that allows a forum within which conversations can be had on a rolling basis, not just on an ad hoc basis, as and when issues arise around EU law, that broader corpus of law and how it impacts and interacts within scope of the Windsor Framework in Northern Ireland.

On whether the committee is getting the support that it needs, I was struck by how, in a recent meeting of the committee, one of the members highlighted that information had been passed to them from within Westminster suggesting that a few pieces of legislation were potentially coming down the track that the committee had not been informed of. Whether that is true is not my point. The fact that committee members were on edge about the potential that they were not being kept up to date is a concern.

We know that when the committee was formed, there were a couple of instances where the appropriate amount of time was not available for it to undertake an inquiry and further conversations. This has set a bedrock for a sense that the committee could ultimately be left having to do a lot of the work itself on the awareness of what needs to be done. My concern is that there would be a duplication of work that should be done before information is fed to that committee, with that work instead being done within the Northern Ireland Assembly itself. I am thinking particularly of the research team within the Assembly.

In theory, the structures are there to support the committee in its important work, but there are issues there. Ultimately, this boils down to a question of trust in those broader structures, but there is also a practicality, where you can see that there is legitimate reason for committee members to be unsure that they are getting all the information in as timely a fashion as they should be at this point.

Roderick Crawford: My original worry was the timescale—whether you could get everything done within two months, particularly given how slowly Explanatory Memoranda come out of government. However, maybe this timescale has got government moving faster. The Democratic Scrutiny Committee has a really good website on its inquiries, with 28 listed EU Acts published on it, and it has run inquiries into nine of them. There are extensive reports of 20 pages or so for each of them, which include stakeholder engagements et cetera. There is good reasoning in its conclusions and on where it has got its information from. On the three or four reports that I have read, it seems to have had plenty of engagement from the rest of the UK Government in terms of Explanatory Memoranda, engagement with the Secretary of State and what have you.

The system seems to be working well and the results seem to be quite positive. The dental amalgam derogation that the EU granted came out of a report and was part of the process of raising that issue. Northern Ireland now has a derogation out to 2034 or 2036—



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The Chair: I want to be sure of what you are saying, because it is not a unanimously held view. Is it your view that the committee is receiving the necessary support and information from the UK Government?

Roderick Crawford: My view is that it lists the support that it is getting from the UK Government and that does not look insubstantial in the inquiries that I looked at. That information often comes quite quickly. For instance, it lists that it made a request on 4 December and got the information on 11 December. That caught my eye, and I thought, “Well, that’s not bad”, given the usual experience in these things. Certainly they were able to complete their reports within the timescale required by the legislation.

Lord Empey: I just wanted to make a couple of points. The UK Government may notify the committee. The Government may also notify the committee about amending or replacement EU Acts which have been formally agreed, et cetera, and it has five working days to decide whether to hold an inquiry. I am not getting the good vibes that you feel. Is that adequate or do we need to look at changing its terms of reference?

Roderick Crawford: It does seem to be an unnecessarily short period to get your ducks in a row. I also cannot think of why it has to be five days rather than 15. I think there is a derogation if the Assembly is not meeting at the time, but then it chews into the two months from publication of the EU Act.

Lord Empey: Do you have any observations, Mr Peretz?

George Peretz: I do not have any on this question.

The Chair: Let us move on to Baroness Goudie.

Q10 Baroness Goudie: Beginning with Dr Rice, how do you assess the measures announced in the *Safeguarding the Union* Command Paper? They are the new working group in the Northern Ireland Executive, the East-West Council, Intertrade UK and the Independent Monitoring Panel. Secondly, what are your expectations of the independent review of the Windsor Framework led by Lord Murphy of Torfaen?

Dr Clare Rice: I will look at the various bodies individually. To the best of my knowledge, the body that was proposed—the working group of the Northern Ireland Executive and the UK Government—is yet to be formed. I am happy to be corrected on that, but I was not able to find any information that suggested that it has happened.

Similarly, the East-West Council was formed as something that would continue in good faith, but it has had one meeting—again, to the best of my knowledge and from what I have been able to identify on it. That body provides a good opportunity, because it specifically looks to engage wider stakeholders in Northern Ireland, beyond purely the political sphere, to allow those wider voices to feed into the UK Government’s position whenever they enter into conversations, through the committee



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structures, with the European Union. However, it is not being utilised effectively yet. Those structures need to be revisited.

Intertrade UK is another important body. In its broad scope, it mirrors the InterTradeIreland body. It is an interesting body to have in place, because it brings together the business representation. Again, it is another route to feed voices into the wider discussions and to raise issues. We touched earlier on the fact that businesses and groups are finding solutions to problems, but they do not know where to take them. Intertrade UK is a potential forum for that to be channelled through. It is something very positive to have stemmed from the *Safeguarding the Union* arrangements.

It remains to be seen how effective the Independent Monitoring Panel will be. We know that it has started its work, but it will be another few months before we see the first output from that. Anything that allows an opportunity for voices to be built into those conversations is good—particularly east-west voices, because there was a concern, with the early iteration of the Northern Ireland Protocol, that they were not being properly fed into, or indeed listened to during, the conversations between the UK and the EU.

All that said, there is a point where you question where the added utility comes in with a plethora of new bodies such as this. It is a question not just of where potential overlap exists between the bodies that I have just outlined but of where the overlap, or potential overlap, might exist with the existing Good Friday agreement strand 3 structures for east-west relations. I wonder whether there is a conversation to be had about how the various—and, in many ways, complementary—agendas, ideas and purposes for these bodies could be streamlined effectively to minimise, not the opportunities for stakeholder engagement, but the complexity with which stakeholders are faced when they are trying to identify how to most effectively take their voices forward and where to channel their interests. There is a potential that this has just created another layer of complexity and ambiguity that stakeholders have to try to navigate now.

The Chair: Thank you, that is very clear. Mr Crawford, can you deal with the last part of the question: the contribution that Lord Murphy of Torfaen can make, and that you hope he might make, to these issues?

Roderick Crawford: The original Protocol was drawn up by administrators, if you like, to govern an economy that they did not understand at all, particularly the degree to which it was integrated into the rest of the UK's economy. In practice, what they designed was unworkable. If you implemented it, it just seized up, and therefore the UK Government were not able to implement the Protocol. It has been substantially reconfigured under the Windsor Framework, but we still do not know, when everything is put in place, how well it will work. The independent review offers the opportunity to get down to the nuts and bolts, without putting a brave face on it and without government defensiveness around it. It offers the only chance to examine how it is



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working, how it will work and where it will not work when it is fully implemented, which it is not yet. It also highlights some of the concerns that we all will have around veterinary medicines, novel medicines et cetera. It is central to the whole thing. It should be the one moment where we get the clearest review of how the Windsor Framework is operating.

The Chair: Thank you. I think we share some of those hopes. I am not going to ask you, Mr Peretz, to respond, because it is basically a political question. Lord Hain, I think that we have covered most of the next question already, but please ask any focused question that you would like to.

Q11 **Lord Hain:** I will express my own view, not that of the committee. Northern Ireland is in an exceptional position. It is not part of a member state of the European Union, but it is subject to its laws, regulations, directives and so forth. How do you informally strengthen Northern Ireland's views? George Peretz, as you rightly pointed out, the Chair covered a bit of this, but I am interested in how the Commission, the Parliament and the Council could be influenced without having formal members of any of those bodies.

Perhaps this is unfair, but the Northern Ireland office in Brussels seems to be a bit of a one person and a dog operation at the moment, whereas you need the equivalent of the UK representative office, that was intervening with Commission officials and liaising with the Parliament and the Council to find out what was going on and influence anything that needed to be influenced. What would your view be about that?

The Chair: Mr Peretz, do you want to start? I can see some legal implications here.

George Peretz: I have to agree with that. I made the point already that it is worth looking at the extent to which Norway and Switzerland have large missions in Brussels. They are aware of the need for people on the ground influencing EU legislation. Having one person and a dog is very rarely good enough, given the numerous actors involved in EU legislation. It is not just in Brussels but in the capitals of the member states. If you are seriously trying to influence EU legislation from outside, you must understand it and what is going on, which involves legal resource, and have the diplomatic capacity and the boots on the ground to do what is necessary to get people's attention.

It was regrettable that the scale of the UK Mission in Brussels was reduced. It is regrettable, and to some extent is now being reversed, the extent to which expertise in the EU and in EU law was downgraded and effectively dispersed under the previous Government. There are some efforts to put that back together again, even as a non-member state. It is not just about Northern Ireland; there are a vast number of aspects of the relationship on which we need to engage and understand what is



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happening with the EU, which requires the EU being a creature of law and often a substantial input of legal expertise—

Lord Hain: Great Britain is in a different position.

George Peretz: Yes, Great Britain is in a different position, but for Northern Ireland that is true in spades, because, as you rightly say, Northern Ireland is in a position of directly and immediately having EU law through the conduit pipe—to use the metaphor that lawyers always use—of the Withdrawal Agreement and Section 7A of the EU Withdrawal Act. It has EU legislation directly applicable in Northern Ireland, where—

Lord Hain: Could Stormont representatives have informal consultative opportunities with the European Parliament? The European Parliament has co-decision rights, so it is very important. Do you have any view on that?

George Peretz: I do not; I am entirely the wrong person to ask, but it would seem to be rather a good idea if they did.

The Chair: There is nothing that lawyers like better than multiple conduit pipes, but that is mostly for their benefit, unfortunately. I am going to elide Lord Hain's question with the next question, which Baroness Phillips will ask.

Baroness Foster of Aghadrumsee: I am Baroness Foster. You are thinking of Arlene Phillips.

The Chair: Sorry; it is hard work

Baroness Foster of Aghadrumsee: It is not the first time.

Lord Hain: It will not be the last.

Q12 **Baroness Foster of Aghadrumsee:** I declare my interests as a member of the board of Co-operation Ireland and as the chair of Intertrade UK. On that, in response to Dr Rice, we have already received some solutions suggested from businesses in relation to issues. Intertrade UK is due to give evidence to this committee.

I want to go back to the infrastructure of the Joint Committee and the UK-EU Joint Consultative Working Group, and to ask the experts about the terminology used in those committees around the representation from Northern Ireland. In each of those cases, FM and dFM may be present—in the specialised committees, there are potential invites to Northern Ireland officials and in the UK-EU Joint Consultative Working Group, the officials will be included. That falls far short of engagement.

I declare that I have attended the Joint Committee as the former First Minister of Northern Ireland. It is not engagement that you get. You are definitely just present. Surely that should be revisited.



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Roderick Crawford: They are not very clear about why they want to engage with Northern Ireland stakeholders and what the purpose of it is, what the output of it is. They obviously want to appear to engage with Northern Ireland stakeholders and have people present, but there is no sense that, if you are a Northern Ireland stakeholder and have something to say about a specific business area, for which you are undoubtedly the expert in the room, what your role there is.

One's concern is that those who are running the committee might not welcome the presence of someone who knows more than they do or be transparent about it.

Baroness Foster of Aghadrumsee: I think that Dr Rice said that it was a very formalised structure. I can confirm that this is the case. How can there be engagement beyond just being present, in these structures?

The Chair: Dr Rice?

Dr Clare Rice: You have hit on a very important point. Representation does not equal engagement. If those that are involved in these meetings are saying that they are in the room but not active participants within the conversations that are happening, then that is a serious issue that needs to be addressed.

It leads to the conversation about the wider transparency of what is going on within these committees. From the external perspective, it does seem that Northern Ireland has a much more active role in feeding into these committee structures than might be the case in reality. That needs to be addressed in terms of the transparency there.

Then there needs to be a conversation around how Northern Ireland can be more actively engaged in those. I know that there are processes involved where Northern Ireland can share its perspectives, through written submissions or by indirect means—informing those who are the so-called active participants within those conversations. However, that is a very clunky way of approaching that sort of representation. If there is a genuine interest, within the UK and in those conversations with the UK and the EU, in listening to voices from Northern Ireland, then this needs to be addressed going forward. It is not enough to say that what has been there to date will be enough in the times ahead. This needs to be looked at.

The Chair: Once again, my sincere apologies to Baroness Foster.

Baroness Foster of Aghadrumsee: I will do a dance later for you.

The Chair: I owe you one.

Q13 **Baroness Ritchie of Downpatrick:** Businesses repeatedly have said to me that they just want a solution to these difficulties that they encounter. It is not only with the EU and the UK Government; it is also with HMRC. They feel that they are on this merry-go-round and cannot get off it,



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whether it is a person acting on behalf of clients or the actual businesses. What opportunities are available for Northern Ireland business and civic society stakeholders, such as business representatives or their agents, to engage with the UK or the EU under the Windsor Framework?

Dr Clare Rice: Not to bang the drum over it, but the committee structures are the formal way in which that would be done. Informally, it would be through strengthening the communication links between Northern Ireland and the UK Government regarding stakeholder interests. That is one of the most effective ways for stakeholder interests to be fed into those wider conversations between the United Kingdom and the European Union, going forward.

That has been helped somewhat by the various bodies that we have discussed beyond the architecture of the Windsor Framework itself—the bodies stemming from the ‘Safeguarding the Union’ arrangements in particular. However, as I have highlighted, for every opportunity there is also a challenge. This is where there needs to be a more concerted conversation around what the overarching and collective approach needs to be with regard to stakeholder engagement in an east-west fashion. I do not get the sense that this is happening yet. There are lots of pieces of a puzzle but not a collective idea yet of what that overall puzzle needs to be.

I think this will become much clearer once things are more established. Everything is still finding its feet. It will only become clearer when all these pieces start bouncing off each other and become fully operational—where the gaps exist and how this can be achieved.

It does need to be addressed, but in terms of how that is done, it will be a matter of “wait and see” to a certain extent, as to how that can be most effectively done.

Baroness Ritchie of Downpatrick: Have you given any thought to how the dots could be joined up? Is it an overarching body? I am nearly afraid to say “any more infrastructure” or we will be swimming in it. Can you suggest how we break down the logjam for businesses and stakeholders in terms of engagement?

Dr Clare Rice: There are a few options with that. Not to lean on the idea that you have suggested, but some sort of overarching mechanism that has all of these bodies under it would potentially be one way. I am not necessarily advocating it, but it could be a way. It will probably come from work largely between business stakeholders and within academia—looking at what these bodies are doing and how they are operating and functioning and being able to engage with parliamentary committees to forward the suggestions with regard to that.

I do not see it as being a straightforward route. It will not be easily done or achieved. However, there is certainly scope there for research as time goes forward, identifying how these various bodies can be brought



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together in a more holistic way, to be dealing with the issues and the challenges that are facing stakeholders in Northern Ireland.

I am sorry that I do not have anything more concrete to suggest.

Q14 **Lord McInnes of Kilwinning:** For the record, I do not have any relevant interests to declare. We have discussed quite a lot the effect and influence of Northern Ireland in the EU. I want to refer back to the relationship between individual stakeholders in Northern Ireland, both business and civil society and EU efforts to reach out to them. There is obviously a commitment from the EU to have an annual presentation of forthcoming legislation, for example, but witnesses to the previous committee have suggested that this is a one-way communication tool rather than being proper engagement. So I wondered—I think EU workshops were talked about before—if there have been any efforts on engagement directly between the EU and stakeholders in Northern Ireland.

Roderick Crawford: I rather suspect that the EU thinks the UK Government have the main job of engaging with Northern Ireland stakeholders and bringing their concerns to the Joint Consultative Working Group. It is primarily the UK's remit. In the early days, the EU did run one or two workshops, but I really think it is the UK's job to get those specialist committees working.

Where do stakeholders go if they have a problem? Who do they call and where do they present themselves? That is a fundamental problem. As we do not want to introduce any additional complexity, another body is probably not what we need. It is about finding a way, and I think the Independent Monitoring Panel, with an expanded remit, is probably the right vehicle. It could have a front end that actually engages effectively with stakeholders with a published phone number, website and portal; you could upload documents and issues and it could run engagement workshops with businesses, and systematic and thematic analysis and monitoring programmes on the functioning of the Windsor Framework. You would know which bit of it you will interconnect with, as a consumer, whether on VAT, state aid, tariffs, the movement of goods and so forth. You would know that you will be dealing with specialist people when you get there and that you will not be fobbed off.

That requires resources; it requires trained people, offices and all of that. Without spending some money, recruiting and getting the right directors for it, I do not think you will have an effective operation. There is a real need for it, and the Independent Monitoring Panel will be good when it takes over from the independent review but, in the meantime, people need to go to the independent review.

George Peretz: This is simply an observation, and the weight of the observation is not one that I can really estimate. But the Trade and Co-operation Agreement has provision for forums of stakeholders and, as members of this committee probably know, forums of parliamentarians to



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look at the functioning and operation of that agreement. That is set out in the Trade and Co-operation Agreement itself. There is no equivalent under the Windsor Framework part of the Withdrawal Agreement. Quite what difference that makes is not for me to judge but, as an outside observer looking at the two separate treaties, it is certainly quite a striking difference between them.

Q15 The Chair: This leads into our final prepared question, which is basically aimed at you, Mr Peretz. As a result of the Windsor Framework, to what extent are businesses in Northern Ireland experiencing increased legal requirements in relation to trade with the EU and Great Britain, respectively? Do you have any suggestions as to how these issues could be mitigated in what some regard as a jigsaw puzzle—not everybody is good at jigsaw puzzles—and some regard as an anarchic boardgame? Do have any suggestions for how to solve those legal problems, which I am sure you have encountered?

George Peretz: Yes. I am probably not the right person to ask about the day-to-day problems faced by Northern Ireland businesses on the ground. For a start, as a barrister, I get a strange perspective of things on the ground, because the legal problems that are brought to me may or may not be typical of anything.

There are two broad headings. There are a number of potential flashpoints of which it is worth being aware. My second heading is about the impact of some of this in Great Britain. I am afraid that there are some people in Great Britain who tend to forget about Northern Ireland and think that it does not really matter.

One obvious flashpoint coming up, as anyone who looks out the window will be aware, is that retaliatory tariffs may well be a feature of life in the next couple of years. There is also the possibility that the EU and the UK may take different approaches to that. That will have a particular impact on Northern Ireland which, for all practical purposes—although not formally—is part of the EU's customs territory. Therefore, trade remedies and retaliatory tariffs imposed by the EU will impact imports into Northern Ireland. To the extent that there is going to be a difference in the UK's and the EU's approach—one could see that there might be—that will be a flashpoint.

Another flashpoint that will happen at some point is the possibility of Northern Ireland courts making references to the Court of Justice of the European Union, which will then be binding. That is just a matter of time but, when it happens, the political reaction will need to be managed.

Another potential flashpoint is in relation to Article 10 on state aid, which is an area where I have practised quite a lot. It was observed by many of us at the time that the potential scope of Article 10 was very wide indeed and would extend to UK government measures that were not obviously primarily connected to Northern Ireland. In practice, that dog has not yet barked, partly because the EU, as part of the Windsor Framework



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negotiations, has formalised that it was not taking the aggressive view of the scope of Article 10 that the wording of Article 10 suggested was justified. In essence, that dog that has not yet barked: the EU has not asserted jurisdiction in cases that have caused political difficulty.

However, there is always the possibility that that will happen. One thinks of events in the last five years that have required very large subsidies being given—Covid, of course, and the Russian invasion of Ukraine. Unfortunately, it is perfectly possible that something like that might happen again, which would give rise to the need for large-scale subsidy. It is also possible that the EU and UK approaches to that will differ. It is almost inevitable that something of that kind done by the UK Government would engage Article 10 of the protocol, which gives ultimate jurisdiction to the European Commission and the European courts. Again, that is a sort of flashpoint waiting to happen.

So those are areas where I can see potential tension. I cannot resist adding that, as members of the committee probably know, over the whole period of our life in the EU, only one Act of Parliament was ever disapplied—the Merchant Shipping Act by the *Factortame* case. Since we left, two Acts of Parliament have been disapplied in respect of Northern Ireland—the Illegal Migration Act and the Northern Ireland Troubles (Legacy and Reconciliation) Act. That indicates the strength and importance of the Northern Ireland Protocol and the Windsor Framework.

The other point I want to make is about the impact on Great Britain. Again, watch this space. For various reasons, it is often understated—one can see why, politically—that the existence of the Protocol has an impact purely on GB legislation, because of the genuine desire not to create too many points of friction between Great Britain and Northern Ireland. One can see that in the areas in which I practise.

The previous Government made a decision to, in essence, take VAT out of the scope of the retained EU law Act to minimise the divergence between our VAT law and that of the EU. I suspect, although it was not stated, that at least part of that was a desire to avoid there being different outcomes in Northern Ireland and Great Britain on the interpretation of various VAT exemptions and zero ratings, which would be inconvenient—to put it mildly—for business and trade between Great Britain and Northern Ireland.

In the area of medicines, although wide powers were taken in the 2020 Act to legislate differently for medicines, they have scarcely been used in Great Britain. Again, although this has not been formally declared, I suspect part of the reason is simply that the more that medicines legislation diverges across the northern part of the Irish Sea, the greater are the problems created in the trade of medicines between Northern Ireland and Great Britain. In practice, therefore, the existence of the Windsor Framework affects legislation in Great Britain.



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An issue that will come up at some point in courts in England, Wales or Scotland, looking at regulation in Great Britain, is about how appropriate it is to take account of the extent to which courts are now permitted to depart from the case law of the European Court of Justice and, post REUL, from settled EU frameworks to interpret retained and now assimilated EU law in Great Britain. At some point, when the courts think about and decide the extent to which they will adopt diverging interpretations of retained or assimilated law, it will be argued that it is appropriate to have regard to the fact that, if they do so, it will create differences between the GB and Northern Ireland regimes. At some point, it will be argued that that should influence their decisions on those points, and that will have to be decided.

The Chair: You have left us with a lot to unpack, which I think we will talk about later. We may revert to you then. Mr Crawford or Dr Rice, do you want to add anything on this question?

Roderick Crawford: I am not sure that Northern Ireland businesses are facing significant legal problems trading into GB. Obviously the problem is GB to NI, and that is one of the key findings that the independent review has to assess. They really ought to be much fewer than they were, but previously the grace periods were in operation. Likewise, Northern Ireland businesses should not be having problems trading into the EU but, again, that is up to the review. I would not expect them to; it is all GB to NI, really, and that includes significant GB businesses based in GB.

Dr Clare Rice: I have nothing further to add.

The Chair: Does anybody have any burning questions that they would like to ask our witnesses before we let them go?

Lord Willis of Knaresborough: I am a newcomer to this committee. Therefore, forgive me if my question is rather obvious.

The Chair: Do you have any interests to declare?

Q16 **Lord Willis of Knaresborough:** I have no interests to declare at all, other than a love of Northern Ireland. We were talking about the Stormont brake, but does any other country in the EU have similar legislation, in which case has it been used effectively?

George Peretz: There is not one within the EU. The closest analogy, and it is not a very good one but it is an analogy, is the brake mechanism that the European Economic Area countries have. In essence, the EEA works because new EU legislation that is related to the single market has to be approved by the EEA's joint committee and saying no is open to that committee. That then opens up the possibility of what are called remedial measures. In practice, that has scarcely ever happened. You will not find a comparison within the EU, but there is something analogous within the EEA.

Lord Willis of Knaresborough: My other question has worried me as,



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when I have tried to engage and find out more about all the organisations in Northern Ireland, I have been staggered by how many organisations there are. Trying to get them to represent people and businesses in Northern Ireland effectively to the United Kingdom Government and the EU seems incredibly difficult. Is there a good reason for this committee to try to find a way of limiting the number of organisations, so that there is an effective way to run through it?

The Chair: Are there any comments?

Lord Empey: Best of luck.

The Chair: Maybe that is why we are here.

Baroness O'Loan: That was the tenor of my question—rationalisation or simplification.

The Chair: I thank our three witnesses very much. Forgive me if I interrupted you, from time to time; we had to get to the end of the questions. I thank you for your valuable contributions, which were of great interest to the committee and will form a significant part of our deliberations, in due course.