



HOUSE OF LORDS

European Affairs Sub-Committee on the Protocol
on Ireland/Northern Ireland

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Rt Hon James Cleverly MP
Secretary of State for Foreign, Commonwealth
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19 October 2023

Dear Foreign Secretary,

FOLLOW-UP TO THE GOVERNMENT RESPONSE TO THE HOUSE OF LORDS SUB-COMMITTEE ON THE PROTOCOL ON IRELAND/NORTHERN IRELAND REPORT ON THE WINDSOR FRAMEWORK

1. Thank you for the Government's response to the House of Lords Sub-Committee on the Protocol on Ireland/Northern Ireland report on the Windsor Framework, dated 11 September 2023. The Committee considered this document at its meeting on 18 October 2023.
2. We are grateful for the detail contained in the response and acknowledge its timely publication, ahead of the debate in the House on 11 September on the Committee's July 2023 Windsor Framework Report and July 2022 Follow-up Report.
3. On 13 September 2023, we undertook a follow-up evidence session to examine business preparation for the operation of the Windsor Framework, particularly in the context of recently published guidance by the Government. We heard evidence from Stuart Anderson, Head of Public Affairs at Northern Ireland Chamber of Commerce and Industry; Alexander Kinnear, Parliamentary Officer at Ulster Farmers' Union (UFU); Mark Tait, Director at Target Transport. We also heard from Michelle Riddalls, CEO at PAGB, the consumer healthcare association; Andrew Opie, Director of Food and Sustainability at The British Retail Consortium; and Peter Hardwick, Trade Policy Advisor at the British Meat Processors Association. We are grateful to all our witnesses for their assistance.
4. The following paragraphs reflect the findings of our follow-up work, which we draw to your attention in the context of the ongoing implementation of the Windsor Framework.

SPS and veterinary medicines

5. While the response does address most of the Committee's recommendations, we would be grateful for further information on the prospects for a long-term solution to the issue of veterinary medicines. Recommendation 14 in our Report invited "the Government's view on the various proposed solutions put forward by industry stakeholders, including a UK-EU sanitary and phytosanitary (SPS) agreement."
6. This issue was also raised with us by Alexander Kinnear of the Ulster Farmers Union, who noted that the Windsor Framework does not address the issue of veterinary medicines. This is concerning, he said, because when the grace period expires on 31 December 2025, "over 50% of the veterinary medicine portfolio that comes from GB to Northern Ireland will be discontinued, which will affect farmed animals and, probably in a greater way, companion animals." He said that the UFU was "quite concerned at what we have heard back from the UK Government, and indeed officials in Europe, over the period since the Windsor Framework was announced, and there appears to be a stalling in anybody wanting to do anything about it," adding that "as farmers, that is really disappointing and quite worrying."
7. Peter Hardwick, Trade Policy Advisor at the British Meat Processors Association, pointed to a "longstanding problem with [Northern Ireland] products of animal origin" which are commercially rejected in Great Britain. He told us that the issue was not about unsafe food but often was "the result of a product being outside specification and therefore being rejected by a retailer, food service business or further processor." He said that "even under the Windsor framework it is virtually impossible" to get rejected goods in Great Britain returned to Northern Ireland due to Export Health Certificate (EHC) and veterinary requirements. Products can move from Northern Ireland to Great Britain without an EHC as there are no certification requirements for trade in that direction. However, they are unable to return without an EHC, which is unobtainable because vets in Great Britain cannot certify goods which do not originate in Great Britain. "We need a practical solution to this," he added. What steps will the Government take to resolve this issue?
8. Mr Hardwick also raised the issue of moving New Zealand lamb to Northern Ireland under the Windsor Framework. Before the Protocol, he said, UK companies used to move New Zealand lamb directly into Northern Ireland. This then became an "at risk" movement under the Protocol, whereby EU duty was payable, leading operators to move New Zealand material first into Great Britain and then re-certifying it before moving it to Northern Ireland. This allowed the duty to be paid and later recovered under the Duty Reimbursement Scheme, a situation that was unilaterally permitted by the UK under the standstill arrangements. He said that: "There is nothing in the Windsor Framework that allows for this to continue even though this was a specific ask from business." This means that operators are having to change arrangements for importing New Zealand materials into Northern Ireland from 1 October and "it may no longer be possible." He called for "clarification as to whether UK has secured agreement that meat from [New Zealand] can still be certified for movement to [Northern Ireland] for further processing." Without this, he said, it could have an impact on staffing requirements in Northern Ireland for those companies involved in the processing of New Zealand materials. Can

the Government provide clarification on whether it will be possible under the Windsor Framework to move New Zealand meat products into Northern Ireland for further processing?

9. While the Response states that the “Government is currently engaging extensively with industry on the products at risk, and welcomes the potential solutions put forward by industry stakeholders”, we would appreciate further information on the possibility of a long-term solution to the issue of veterinary medicines, including the prospect of a UK-EU SPS agreement. What is the current state of progress regarding the possible SPS agreement between the UK and the EU? Will the Government prioritise finding a resolution of this issue well in advance of the expiration of the current grace period?

Movement of livestock

10. Alexander Kinnear also told us that the Windsor Framework “does not, in any way, address livestock movements, which is of serious concern to pedigree breeders in Northern Ireland whose farms and businesses have collapsed in trade.” He said that currently farmers in Great Britain cannot access livestock from Northern Ireland’s livestock-intense agriculture sector. Trade that, at times, “used to go into hundreds of animals, both cattle and sheep,” he said, “is now into single digits. It is unsustainable in the long term for those businesses.” Mr Kinnear argued that “the checks that were in place before Brexit happened to protect the all-Ireland epidemiological unit were more than enough to ensure that disease did not get out of control and to manage risks.” While the EU “did compromise about a year and a half ago when it amended the issue,” it remains the case that marts and livestock centres in Great Britain “have to be export-licensed and APHA-approved, which is an onerous process requiring farmers to change boilersuits and put on different footwear in order to look at Northern Ireland animals.” What is the Government’s response to these concerns?

Green Lane and Northern Ireland Retail Movement Scheme

11. Regarding the implementation deadlines for the green lane, Andrew Opie, Director of Food and Sustainability, British Retail Consortium raised the issue of the 1 October 2023 deadline for the first phase of the new labelling requirements for the Northern Ireland Retail Movement Scheme, telling us that the “timescale was completely unfeasible” for supermarkets. Mr Opie said that “while the concepts were given in June, it is only guidance. We only started to get full guidance from about September onwards. We have had a real problem with the timescales and trying to get things ready.” As a consequence, because supermarkets “did not see the detail to allow them to work with their supply chains in time for October...we have required some late easements.”
12. Stuart Anderson added that the “difficulty with the guidance is that it came on 28 July for implementation on 1 October” and that “the system goes live on 25 September and comes into effect on 1 October, which does not leave an awful lot of time for testing, which the retailers are quite keen to ensure happens.” Peter Hardwick agreed that there are “constant delays in guidance being issued, eating into business time for preparation.” What is the Government’s response to concerns that guidance was produced too late for supermarkets to comply with the initial deadlines? How will this situation be avoided ahead of future implementation deadlines?

13. Mr Opie also told us that “parts of the detailed agreement are complex and prevent us from sending some of the food that we would have otherwise sent to Northern Ireland under normal circumstances.” While supermarkets “have received easements in the short term to overcome that problem” there are nevertheless “some issues that remain to be resolved with the EU.” For example, he said that “where products are imported from the rest of the world through a port in Great Britain, not through the EU, then are not processed in Great Britain but are sent to Northern Ireland, we cannot send that through the green lane at the moment.” Is the Government aware of this issue? Can you provide an update on progress towards find a resolution?

Food supplements

14. We note that the Response states that the Windsor Framework’s provision on medicines “fully addresses the significant concerns that were being voiced by industry, clinicians and patient groups about medium-term issues prior to the agreement.”
15. Michelle Riddalls, CEO at PAGB, the consumer healthcare association agreed that the situation “looks promising.” She added, however, that “there are still outstanding questions and concerns that we want to raise over the implementation.” She told us that though “medicines will just be able to go through the green lane without any additional requirements”, there is an issue with “food supplements, which come under the banner of food.” Ms Riddalls said that: “A lot of our companies will be providing food supplements, which include products of animal origin in some cases, that need to go over to Northern Ireland.” This has “become confusing” because “the border target operating model, the UK internal market scheme and the Northern Ireland retail movement scheme are all being implemented at the same time without any overview and co-ordination happening at a government level.” What is your response to concerns around the lack of co-ordination between the various Government departments and agencies responsible for implementing aspects of the Windsor Framework? How can this co-ordination be improved at a Government-wide level?
16. Ms Riddalls also highlighted that if a food supplement product “does not have labelling on the pack itself, there are strict requirements on how it has to go from GB to Northern Ireland, which include not shrink-wrapping it, putting it on a pallet and then having that pallet labelled.” She added that this “is quite a concern to our members” because when it arrives in Northern Ireland, “we have been advised that the product cannot be taken out of the box or stored at wholesalers” but “has to go directly to the store.” She added that her members are unsure how to meet this requirement may use the red lane as a consequence. How do you respond to these concerns?
17. Ms Riddalls also raised that some of the packs of food supplements and other products destined for Northern Ireland are joint with Ireland. She stated that some of these products “are using Northern Ireland under the food business operator model to allow them to go into the UK and Europe in order to make the most of unfettered access.” However, when she has asked “about getting joint packs over to Northern Ireland, we have been told that...you have to over-stick them or they go through the red lane...” However, “in a year’s time all product will have to say ‘not for EU’ on it. Therefore, you will not be able to have joint products any more.” This, she added, “is a real concern for our members and could mean lack of supply to the UK as a whole as well as to Ireland, because none of them meets the minimum order quantities.” What is your response to the suggestion that the requirement for “not for EU” labelling will lead to problems with

the supply of food supplements to the UK and Ireland? Does the Government have plans to address this issue?

Medicines and medical devices

18. We also note the statement in the Responses that the Government “does not have concerns over the supply of medical devices to Northern Ireland, which remains stable” but that it continues to “monitor any potential issues closely, including the pace of access to new products, and will take action as required to ensure supply.”

19. Michelle Riddalls told us that:

“Medical devices were omitted from any change to do with the Windsor Framework, which is a bit of a concern to us...Companies are still very reliant on the letter of comfort to get stuff over to Northern Ireland. Of course, a lot of medicines also contain medical devices, so there is an interlinking piece there. Our members are very keen to be able to continue to use the CE mark from Europe to ensure medical devices can go forward.”

What further information can you provide on the issues raised in relation to medical devices, including the ability of producers to use the CE mark?

20. Ms Riddalls also said that “the legislative changes that went through as part of the Windsor Framework to help the centralised products were really positive” in that they allowed products to be regulated by the Medicines & Healthcare Products Regulatory Agency (MHRA). Nevertheless, she added that the legislation “did not say that there was that provision for all the other licences that are derived via the EU processes. As we read the legislation, the EU acquis still covers the products that are under MRPs [Mutual Recognition Procedure] and DCPs [Decentralised Procedure]. In effect, that means that those products still have to adhere to EU law and EU requirements.” What is your response to these concerns?

Groupage and mixed loads

21. We note the statement in the Response that the “Windsor Framework delivers significant benefits for operators who move groupage consignments and mixed loads” and that “businesses following these business practices will still benefit from the removal of burdensome paperwork and reduction in checks offered by the Framework.”

22. In his evidence, Mark Tait, Director of Target Transport, said that, “In many respects for haulage, we see some of this as a step backwards rather than an improvement.” He argued that the “Windsor Framework is presented as an easement for many traders, but, in reality, in order to show fewer physical checks, the bureaucracy has been pushed further and further up the supply chain, and ultimately it is down to us as hauliers to try to manage that.” What is your response to these concerns?

23. We note the statement in the Response that the “Government continues to work with hauliers to ensure arrangements under the Windsor Framework work as intended in the context of groupage and mixed loads.”

24. In his evidence, Mr Tait also raised a number of practical questions regarding the arrangements for groupage and mixed loads. He asked

“if we have one trailer full of 50 different consignments for 50 different customers, some of which are red lane and some green lane, and if one of those red lane shipments is pulled, what happens to everybody else’s freight? It is subject to those red lane procedures, so who pays for the delays? Who covers those costs? That is an answer that we have not had. What is the bureaucracy going to look like? Again, we are not sure...We certainly need more clarity on moving groupage through the red and green lanes with a mixture of loads on the same vehicles. What further easements can be provided for the haulage sector?”

25. Mr Tait called for “a workaround so that we can pick up data from current operating systems as opposed to manually inputting every consignment time and again,” which is “costing us time and money, and delaying freight.” What is your response to these questions and suggestions?

26. Peter Hardwick added that it unclear “when doing groupage who applies seals and where.” He said that it “has been suggested that we need to apply a seal to the pallet, provide a seal to the driver with the same number as that on the pallet and that the driver will apply all the seals on the last pick up.” However, this he said “could result in 20 seals per trailer which is simply impractical”, adding that: “We need clarity on this.” Mr Hardwick also said that businesses “are still awaiting clear guidance on the use of official approved seals and commercial seals. In particular,” he said, “we have asked what makes a commercial seal an approved seal and have not received any answer as yet.” Will the Government provide further clarification on the use of seals for groupage?

Duty reimbursement scheme

27. Mark Tait also told us that “one of the frustrations” with the duty reimbursement scheme and the customs waiver scheme, is the “£2 million threshold for manufacturers that are bringing goods in for processing.” While accepting that the Government “can argue that that covers 80% of businesses,” he said that “among the other 20% of businesses are some of the biggest employers in Northern Ireland.” He gave the example of one customer who “does not sell a single item of product outside the UK market, yet everything that they now bring in from GB will have to be red-laned because of that £2 million turnover.” What is the rationale for the £2 million threshold? What is your response to the concern that it will unfairly impact some businesses?

28. Stuart Anderson said that the Northern Ireland Chamber of Commerce welcomes the Duty reimbursement scheme in principle but said that “it has been really clear that SMEs in particular were not relying on the waiver scheme” and were “paying duties when they did not need to...” He suggested that it was “really useful” to have the guidance but that it “needs to be pushed further among our SMEs [small and medium sized enterprises] and our micro-sized businesses to make them aware of it, so that they are not paying any duty up front...” Does the Government have any further plans to publicise the duty reimbursement scheme guidance, particularly among SMEs?

UK Internal Market Scheme

29. Stuart Anderson told us that some of his members found the application scheme for the UK Internal Market Scheme “time-consuming and cumbersome.” Nevertheless, he said

that though the “process of application is challenging...the approval has been forthcoming at pace, which is an indication of the guidance working in that respect.” Is the Government considering any measures to simplify the application process?

Engagement with business

30. We note the information provided in the Response on the Government’s engagement with stakeholders by means of the production and further elucidation of guidance through “forums, roundtables, and individual business engagement,” which, it states, “will help to ensure a smooth rolling out of the new arrangements.”
31. However, a number of witnesses expressed frustration as business attempted to engage with the Government to seek clarification on a range of issues following the agreement of the Windsor Framework. Mark Tait said that “it has taken six months of engagement with the...Cabinet Office, asking constant questions, to finally get some clarity in the past month” on the UK Internal Market Scheme. He added that the “level of engagement has been really poor, especially with the haulage industry.” Michelle Riddalls told us that on the issue of food supplements, one problem “has been that there is one place you can send emails to at Defra, and we just do not get replies.” In her view, the “speed with which we get information and clarity back on the questions just is not sufficient. There are no central Q&As that we receive. It has felt very difficult for people trying to prepare.” Peter Hardwick said that “our members attend many Defra and APHA webinars, and they keep being told that there will be further guidelines. Lots of questions are asked that remain unanswered; they are often the same questions.” He added that: “We have often found the guidance as a whole late and confusing.”
32. We also heard from Mr Opie that for the six major retailers that supply the majority of food to Northern Ireland consumers through supermarkets “the framework and the detail were agreed without necessarily understanding the practical implications for our supply chains in particular.” As a result, supermarkets “were asked to do some pretty unfeasible things, such as re-labelling frozen food”, when “it is just not possible to get a sticker on the frozen food, and we would not necessarily know where it is.” He also states that the introduction of a “completely separate system for moving plants” means that “supermarkets are faced with one lorry requiring two licences, one that requires more notice to be given.” This, he said, is not possible: “You cannot give notice if you have a lorry that is going over into the food supply chain. They are generally on a three-day turnaround. They are going to Northern Ireland, back to the depot and then back to Northern Ireland. You cannot disrupt them like that.”
33. Examples such as these could have been avoided, Mr Opie suggests, had more engagement taken place before, and not just after, the Windsor Framework was agreed: “More thought should have been given to align the schemes as we designed them, so they could work with our supply chains.” Peter Hardwick, agreed, adding that:

“that one of the problems at the moment is that things are announced apparently as solutions and only then are meetings organised with industry to work out how they will actually work. That is the wrong way round. There needs to be a lot more consultation first, and then we can come out with a worked-out solution, rather than

lots of webinars and seminars where we are told what will happen and there are lots of questions that remain unanswered.

What is the Government's response to these concerns and suggestions? How will the Government reflect these experiences in its plans to engage with business ahead of the next phase of Windsor Framework implementation?

Regulatory divergence

34. Mr Opie also told us that one of the “emerging risks” as the Windsor Framework develops will be “on divergence in regulation and how that applies to the goods we sell in Northern Ireland.”
35. The Committee's Recommendation 22 re-iterated its “call, made repeatedly since March 2022 with the support of Northern Ireland stakeholders, for the Government to create and maintain an up-to-date record of regulatory divergence and its impact on Northern Ireland” also received a rather limited reply. We note the response that “the Government actively monitors and assesses the impacts of EU policy developments and the scope for regulatory divergence” and that “Government departments will continue to work together to log and analyse information, identify issues.” However, we also note that the Government does not commit to maintaining an up-to-date record of regulatory divergence and its impact on Northern Ireland. This area will be the subject of future scrutiny from the Committee.

The democratic deficit

36. We note the focus in the Response on the Stormont Brake as an answer to the democratic deficit which existed under the Protocol. We further note the restatement of the Government's commitment that “the First and deputy First Minister will have a seat at the table in the UK delegation for any UK-EU Joint Committee meetings which consider matters concerning Northern Ireland.”
37. In its Report, the Committee found that the involvement of the Northern Ireland institutions “must include consultation by the EU at the earliest opportunity in the policy-making process with Northern Ireland Executive Ministers, officials and Members of the Legislative Assembly on proposed EU law potentially applying to Northern Ireland.” We would be grateful for further detail on the Government's view on this suggestion. In particular, we would be grateful for the Government's response to our call that, in addition to the First and deputy First Ministers, Northern Ireland Ministers should be able to attend and make representations to the Joint Committee and or its Specialised Committees and that Northern Ireland officials are similarly consulted in advance.
38. Finally, our Report noted “the continued suspension of the power-sharing institutions demonstrates [that] political tensions in Northern Ireland over Brexit and the Protocol remain acute” and acknowledged “the importance and the difficulty of resolving these issues to the satisfaction of all communities in Northern Ireland.” We note that recent press reports have suggested the Government is considering plans to take powers to

implement aspects of the Windsor Framework which are currently devolved to the Northern Ireland Executive.¹ What is the Government's current position on this issue? Would the Government consider such a development to be compatible with the Sewell Convention?

I am copying this letter to Rt Hon Chris Heaton-Harris MP, Secretary of State for Northern Ireland; Baroness Neville-Rolfe, Minister of State (Cabinet Office); Sir William Cash MP, Chair of the Commons European Scrutiny Committee; George Wilson, Clerk of the Commons European Scrutiny Committee; Simon Hoare MP, Chair of the Commons Northern Ireland Affairs Committee; Rizgar Kiyak, Parliamentary Unit, Foreign Commonwealth and Development Office; and the Secretariat of the Northern Ireland Assembly Committee for the Executive Office.

Yours sincerely,

A handwritten signature in dark ink, reading "Michael Jay". The signature is written in a cursive style with a small dot at the end.

Lord Jay of Ewelme
Chair of the Protocol on Ireland/Northern Ireland Sub-Committee

¹ <https://www.politicshome.com/news/article/westminster-government-control-of-windsor-framework-northern-ireland-dup>