

BREXIT BRIEF

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Tony Brown

Introduction

“If not this – then what?” This is the question DUP politicians must be asking themselves on the Windsor Framework, as Sir Jeffrey Donaldson attempts to steer his party towards compromise. The fate of Northern Ireland’s power sharing institutions is widely seen to hang on whether the DUP accepts the deal, but there are indications that the UK Prime Minister, Rishi Sunak, intends to push ahead with or without the DUP, with the possibility of Direct Rule being discussed.

The Windsor Framework seeks to bring about changes – in broad policy and in practical terms – to deal with the difficult issues arising from the implementation of the original Protocol on Ireland/Northern Ireland (“the Protocol”). While these developments do not – and cannot – eliminate the inherent, negative impact of Brexit, they do represent a significant, positive movement in UK-EU relations. The successful negotiation and elaboration of the Framework stand in sharp contrast to the negative, even hostile, engagement between the UK and the EU during the Johnson/Frost years with its loss of trust on both sides and damaging lack of

flexibility and compromise. A new element of cooperation and trust was widely welcomed by political and business interests.

The key factor in arriving at this positive situation was the arrival of a new UK administration led by Prime Minister Rishi Sunak. Mr Sunak’s early prioritisation of the issues arising from the Protocol made it clear that he wanted to put the controversy behind him, and create a situation in which an agreement with Brussels could be reached. From the outset, his approach worked, with the *Irish Times* reporting that, “After Johnson and Truss, Sunak was a Prime Minister the EU could work with.” According to the *Irish Times*, as a pragmatic, technocratic, and economy-focused Prime Minister, Mr Sunak was a man with whom both Brussels and Dublin hoped they could do business. Trust was built quickly from the very top. When European Commission President, Ursula von der Leyen, met Mr Sunak at the COP27 climate conference in Sharm El-Sheikh, they seemed to click immediately. Likewise, the Vice-President of the European Commission for Interinstitutional Relations, Maroš Šefčovič, and the UK Foreign Secretary, James Cleverly, were also said to enjoy a

good relationship, sharing a lively sense of humour and a love of the classic British political comedy, *Yes Minister!*

Section One: State of Play

Explaining the Framework

RTÉ News' Europe Editor, Tony Connelly – in his 11 March report, *Windsor Framework: Is this time different?* – writes, "In a rare moment of harmony, EU and UK officials seem convinced that the Windsor Framework is the elusive common ground that will resolve the Northern Ireland issue and open up the first post-Brexit era of warm cooperation." One senior figure told Mr Connelly that the Windsor Framework "... is the first agreement I've seen on Northern Ireland since Brexit that I've genuinely believed will work and will stick, or at least has a very strong chance to do that".

The UK Command Paper, setting out the components of the Framework refers to the Agreement as:

Restoring the balance of the Belfast (Good Friday) Agreement by fundamentally recasting arrangements in three key areas- restoring the smooth flow of trade within the UK internal market, safeguarding Northern Ireland's place in the Union and the ability of Northern Ireland to benefit from UK-wide tax and spend policies, and addressing the democratic deficit that was otherwise at the heart of the old Protocol.

The sections of the Framework text reflect the complexity of the arrangement, covering: Goods Movements, Agrifood, VAT and Excise, Medicines, Plants and Seeds, Subsidy Control,

Pets, and Veterinary Medicines. Reference is made to supporting the UK internal market and protecting the EU Single Market in the new framework. The Democratic Deficit section covers the application of EU rules to Northern Ireland, the Stormont Brake, the role of the Northern Ireland institutions, and new structures of UK-EU cooperation.

EU Member States are expected to endorse the changes on 21 March, mandating the Vice-President of the European Commission, Maroš Šefčovič, to agree them with the UK Foreign Secretary, James Cleverly, through the EU-UK Joint Committee. Both the EU and the UK are then expected to proceed with amending their own legislation accordingly. The intention is for the UK to make its formal decision in parallel with the EU on the same day as the General Affairs Council, 21 March 2023. An EU source commented that this was planned "so that no one is taking the first step and then waiting for the other, but rather they are doing this in tandem. This is an important signal of mutual trust and mutual cooperation."

Historian, Diarmaid Ferriter, wrote in the *Irish Times* on 3 March 2023:

There is also the obvious plight of a DUP running out of political road and facing isolation. What will be interesting is the extent to which, for all Sunak's bluster, the economic message can sufficiently weaken the DUP's political opposition, especially given that Northern business and economic interests are largely supportive. We are hardly at the stage where economic pragmatism will trump politics in the North, but it may well carry considerable weight.

Significantly, the Northern Ireland Secretary, Chris Heaton-Harris, has indicated that he is working to “clarify all the questions from unionism. I would like to think that, at that point, we will be able to get the Executive up and running.”

Stormont Brake

The element of the Framework which has attracted most comment and scrutiny – in both Brussels and Belfast – is the Stormont Brake which is designed to give the Assembly a say in how new EU laws will be applied in Northern Ireland. The Brake provides that the UK Government may challenge amendments to existing EU laws which apply in Northern Ireland if 30 MLAs, from two parties, invoke a Petition of Concern. If the EU challenges the UK request, the matter would go into the arbitration procedure outlined in the Withdrawal Agreement, in which the European Court of Justice (ECJ) has no role. In order to invoke the Stormont Brake, strict criteria would first have to be met, as the 30 MLAs seeking to pull the Brake must show that there is something “significantly” different about an amendment to an EU law, whether in its content or scope, and that the rule has a “significant impact specific to everyday life that is liable to persist.” It is envisaged that the Brake would only apply in “the most exceptional circumstances and as a last resort having used every other available mechanism.”

The Stormont Brake is the subject of detailed analysis and discussion with demands from all sides for clarification by the EU and UK authorities. The need to utilise several layers of oversight involving Specialised Committees and Working Groups is seen to require greater clarity than initial explanations and political

claims. Concerns exist among nationalists that the Brake could be used to trap power sharing in a form of veto politics, while the *Belfast News Letter* has commented that, “Far from unionists having their foot on the brake, they would be in the back seat with permission to ask the driver to brake.”

Alliance Party Reform Demands

The Alliance Party Leader, Naomi Long, has argued strongly for reform of the voting system within Stormont, which allows members designated as either “nationalist” or “unionist” to carry out key decisions in “cross-community” votes. Such votes – require the support of both main communities in Northern Ireland, in other words a majority of both unionists and nationalists, meaning parties designated “other”, such as Alliance, effectively do not count. The party seeks to “end ransom politics” whereby one party can collapse the Assembly as both Sinn Féin and DUP have done in the past. Naomi Long told her party annual conference that she hopes for reform through political agreement, but does not rule out taking a legal route through a human rights case.

DUP Panel to consider Windsor Framework deal

Former DUP Leaders and First Ministers Peter Robinson and Dame Arlene Foster are among those appointed to an eight-member consultative panel announced by DUP Leader, Sir Jeffrey Donaldson, who has made clear that the DUP will take its time to consider the Windsor Framework before deciding whether to back it and lift its current blockade of devolution at Stormont. Sir Jeffrey has urged the UK Government to stop “overselling” the Windsor Framework and instead to provide

clarity its detail. Announcing the new panel, Sir Jeffrey said:

Today I have established a group to commence and undertake a wide consultation process within Northern Ireland, listening and taking views on the Framework document. This work will be undertaken in parallel with our on-going engagement with the UK Government. The group will comprise both members of our party as well as independent thinkers who have standing within the broader community. They will want to engage with a broad section of the unionist and loyalist community, the business sector, civic society and others who want to see Northern Ireland prosper within the Union.

In addition to the two former First Ministers, the panel includes Carla Lockhart MP, Lord Weir, Ross Reed, John McBurney, and assembly members Brian Kingston MLA and Deborah Erskine MLA. Sir Jeffrey indicated that the panel would report back to him by the end of March.

Peter Robinson had previously argued that the party should take as long as necessary to reach a decision on the Framework since, according to the *Belfast Telegraph*, the detail of the agreement is “fiendishly complicated” and the party should do its homework before signing up. *The Belfast News Letter* commented that “The DUP should lead unionist opinion, not just consult on it.”

In Dublin, the Taoiseach, Leo Varadkar, told the Dáil that the DUP should be allowed a “little bit of time and space” to consult and consider the Framework text. The *Irish Times* commented that “The British and

Irish governments have wisely given the DUP as much time and space as the party requires as it considers whether to accept the Framework.”

European Commission Statement, 27 February 2023

The Vice-President of the European Commission for Interinstitutional Relations, Maroš Šefčovič, gave the following statement about the joint solutions set out by the EU and the UK in the Windsor Framework:

Today, the European Commission and the Government of the United Kingdom reached a political agreement in principle on the Windsor Framework. This constitutes a comprehensive set of joint solutions aimed at addressing, in a definitive way, the practical challenges faced by citizens and businesses in Northern Ireland, thereby providing them with lasting certainty and predictability.

The joint solutions cover, amongst other things, new arrangements on customs, agri-food, medicines, VAT and excise, as well as specific instruments designed to ensure that the voices of the people of Northern Ireland are better heard on specific issues particularly relevant to the communities there. These new arrangements are underpinned by robust safeguards to ensure the integrity of the EU’s Single Market, to which Northern Ireland has a unique access.

Today’s political agreement in principle allows the two sides to open a new chapter in our partnership, based on mutual trust and full cooperation, also

allowing to unlock the full potential of their relationship. stated:

European Commission President, Ursula von der Leyen, said:

The Windsor Framework was made possible by genuine political will and hard work guided by the fundamental principle that the interests and needs of people should always come first. Supporting and protecting the hard-earned gains of the Good Friday (Belfast) Agreement was the prerequisite of our endeavour. Today, our achievement allows us to put forward definitive solutions that work for people and businesses in Northern Ireland and that protect our Single Market. It also allows us to turn the page towards a bilateral relationship that mirrors the one of close allies standing shoulder to shoulder in times of crisis.

Statement by Tánaiste and Minister for Foreign Affairs, Micheál Martin, 27 February 2023

Ireland's Tánaiste, Minister for Foreign Affairs and Minister for Defence, Micheál Martin, welcomed the announcement of the Windsor Framework and praised the "genuine engagement" and cooperation shown by the UK and the EU in securing a deal, while also expressing his belief that the Framework would address concerns voiced by businesspeople and the unionist community in Northern Ireland. He added that he hoped that the Windsor Framework would allow attention to shift to the restoration of power sharing in Northern Ireland, and usher in a warmer phase in UK-EU relations. Mr Martin

Working together, the EU and the UK have ensured that Northern Ireland benefits by having unique access to both the EU single market and the UK's internal market. The consensus reached today between the EU and the UK will provide the certainty and stability that Northern Ireland needs in order to move forward.

The focus can now turn to getting the institutions of the Good Friday Agreement up and running, across all three strands [...] I appreciate that some time may be needed to consider the detail of the deal, but I would urge political leaders in Northern Ireland to act quickly, to put in place institutions that can respond directly to the needs of the people of Northern Ireland. People in Northern Ireland have been clear that they wish to see an Executive formed.

...

I share the hope that today's announcement allows the EU and the UK to open a new chapter in their relationship [...] It is in Ireland's interests that the EU and the UK have a positive, forward-looking relationship. Today's agreement also provides an opportunity for an improved British-Irish partnership, which has been so vital for peace and prosperity on these islands.

Section Two: The Evolving Debate

James Cleverly in The Irish Times

On 28 February 2023, the UK Foreign Secretary, James Cleverly, contributed an article to the *Irish Times*, titled Windsor Framework is a good deal for the UK and EU. Mr Cleverly described the Windsor Framework as a “decisive breakthrough” and emphasised the importance of peace and stability in Northern Ireland, as well as the success of the British-Irish relationship. He continued:

The Windsor Framework delivers free flowing trade within the whole United Kingdom, protects Northern Ireland’s place in our union and safeguards sovereignty for the people of Northern Ireland.

As the Prime Minister said in the House of Commons on Monday, we now want everyone involved to reflect carefully on the agreement we have reached, which took hundreds of hours of painstaking negotiations. We are confident it can mark a turning point for the people of Northern Ireland, after several years of uncertainty and unhappiness with the way the protocol was working. We also hope that it provides a firm basis for a return to power sharing, recognising that the parties will need time and space to digest the detail set out in the comprehensive Windsor Framework.

...

The deal we have reached fully respects the need to protect the EU Single Market

and avoids any return to a hard border. But it reflects the economic reality of Northern Ireland – its dependence on east-west trade – in a way that 2019 deal did not. So the Windsor Framework enables us to move forward on a basis of detailed agreement and shared understandings, avoiding the risk of further unilateral action on either side.

CBI Letter to Prime Minister, 10 March 2023

Business leaders from major companies across Northern Ireland have written to the Prime Minister stating their support for the Windsor Framework. The open letter was signed by representatives of businesses which are part of the Confederation of British Industry’s Presidents’ Committee and Northern Ireland Council. The letter recognised the agreement as a “watershed moment” and “a huge opportunity” which gives Northern Ireland dual access to the UK and the EU markets. The letter concluded with a call for the restoration of Stormont:

With this historic agreement behind us, now is the time for power-sharing to be restored in the Northern Ireland Executive and for political representatives to turn their attention to economic growth and delivering greater prosperity for everyone across Northern Ireland.

Irish Times Editorial 3 March 2023

In an editorial, the *Irish Times* gave its view on the Windsor Framework, stating “It’s time for the DUP to say yes”. The *Irish Times* is supportive of giving the DUP time to reach

its conclusion on whether to accept the Windsor Framework, but also comments that it is clear that the Framework will proceed irrespective of the DUP's stance:

[The Framework] will pass any vote in Westminster, and British industry is crying out for it. If the North's views on leaving the EU couldn't trump the decision taken by the UK as a whole on Brexit, so the concerns of the DUP will not stand in the way of the national interest of the UK as judged by its government. The DUP can continue to block the revival of the Stormont institutions, but that is as far as its power goes.

...

Donaldson must also ask himself and his party: what is the alternative? If the DUP rejects the deal and refuses to reopen Stormont, he will be depriving the people of Northern Ireland of functioning political institutions at a time when they are desperately needed. It is hard to see how that would advance either the interests of all the people of Northern Ireland, or the cause of unionism. Too many times in the past, the DUP and the strain of unionism it represents has rejected compromises, building its fortresses on foundations of sand. It is time for a new approach. Time to look to the future. Time for leadership. Time, now, to say Yes.

Boris Johnson on Framework Deal

The former UK Prime Minister, Boris Johnson, speaking at the 2023 Global Soft Power Summit in London on 2 March 2023, gave

his view on the Windsor Framework:

I'm conscious I'm not going to be thanked for saying this, but I think it is my job to do so, we must be clear about what is really going on here. This is not about the UK taking back control and although there are easements this is really a version of the solution that was being offered last year to Liz Truss when she was foreign secretary. This is the EU graciously unbending to allow us to do what we want to do in our own country, not by our laws, but by theirs.

I'm going to find it very difficult to vote for something like this myself, because I believed we should've done something very different. No matter how much plaster came off the ceiling in Brussels. I hope that it will work and I also hope that if it doesn't work we will have the guts to employ that Bill again, because I have no doubt at all that that is what brought the EU to negotiate seriously.

Responding to questions, Mr Johnson conceded that he made mistakes when agreeing the Northern Ireland Protocol, which prompted the DUP to block Stormont in protest against new Irish Sea trade barriers. He said, "I thought those checks would not be onerous since there isn't that much stuff that falls into that category; most of the goods stay in Northern Ireland." The former Prime Minister was also reported as 'muttering', "It's all my fault, I fully accept responsibility."

Paisley/Bryson Think Tank on Framework

The Centre for the Union – a recently formed think tank associated with DUP MP Ian Paisley Jr and loyalist activist Jamie Bryson – has published a report which urges unionists to reject the Windsor Framework in its present form. The report concludes that “further concessions” or “components” must be “bolted onto the Framework” and argues that “it will be for unionists to determine what those concessions should be but until then, the Windsor Framework cannot be supported by unionists as a solution to the Protocol.”

The report contains a legal opinion by the former Northern Ireland Attorney General, John Larkin, who argues that the Framework does not strengthen the constitutional status of Northern Ireland as part of the United Kingdom.

In the report’s foreword, Ian Paisley writes: “Our recent history has taught us that we have been bitten hard by the Protocol and we should continue to tread cautiously as we advance the cause of the pro-Union people.” He further commented, “Does it answer and satisfy all of our seven tests? It is very clear it doesn’t.”

Bertie Ahern on reforming Stormont

Speaking in Belfast, former Taoiseach, Bertie Ahern, warned politicians in both UK and Ireland that it would be a “fatal mistake” to seek to reform the Stormont power sharing arrangements during the current period of deadlock over the Assembly and Executive. He was reacting to the remarks of the Alliance Party leader Naomi Long – addressing

her party conference – who described the Stormont provisions for parties that identify as neither unionist nor nationalist as “an affront to democracy” and indicated that she was exploring a legal challenge.

Mr Ahern said:

My strong advice is that the institutions should be up and running – do not fall into the trap of having a debate about reform before the institutions are up and running. I think you can have a sensible discussion about reform as we did in the St Andrews Agreement in October 2006. But to try to have that discussion now will delay the Assembly. It will be used as a delaying tactic. So let the institutions be set up as quickly as possible at the end of the current debate on the Windsor agreement...but do not do it the other way around. It’ll be a fatal mistake, believe me.

Hansard 1 March 2023

On 1 March 2023 during Prime Minister’s Questions, the SNP Leader in the House of Commons, Stephen Flynn MP, asked the Prime Minister, Rishi Sunak the following on the subject of the Windsor Framework:

Let us be clear: what the Prime Minister said yesterday was that EU single market access will be a good thing for business. Of course, that is in contrast to the leader of the Labour party, who said in December that EU single market access would not boost economic growth. Does it hurt the Prime Minister to know that the Labour party believes in Brexit more than he does?

The Prime Minister replied:

With regard to Northern Ireland, the important thing is to avoid a land border on the island of Ireland between north and south. That is what it is crucial to achieve in getting the right framework for the arrangements in Northern Ireland, and the businesses there that trade across that border on a daily basis, with complex supply chains need, and value that access. That is something that the Windsor framework has sought to achieve and, I believe, delivers. It is not about the macro issue of membership of the European Union; it is about getting the right mechanisms in place to support businesses and communities in Northern Ireland. I would say to the hon. Gentleman that he knows better than that: he knows that this is about Northern Ireland, and I hope that he can support what we have agreed.

DUP Attitude Survey

An academic study of voters in the 2021 Assembly elections carried out by Queen's University Belfast indicates that the DUP has no mandate from its supporters for collapsing the power sharing institutions in its efforts to scrap the Northern Ireland Protocol.

The findings of the detailed survey, carried out before the Windsor Framework was announced, suggests that protestant voters are opposed to scrapping the Northern Ireland Protocol if it means the end of the power sharing institutions. The study concluded, "Among 2022 Assembly election voters of the DUP, TUV and UUP there was no firm consensus in opposition to the Protocol

and power sharing. These parties therefore do not have a strong mandate from their voters to adopt a hard-line anti-protocol, anti-power sharing position."

The survey also found that when asked to choose between a trade border being between Great Britain and Northern Ireland or between the Republic of Ireland and Northern Ireland, a clear majority favoured the Great Britain-Northern Ireland option.

LucidTalk Poll

The latest poll carried out by LucidTalk for the *Belfast Telegraph* reveals that two-thirds of people in Northern Ireland back the Windsor Framework, but three-quarters of DUP supporters would vote against it in a referendum. The poll shows while the overwhelming majority of nationalists and Alliance/Green voters support the Windsor Framework, just over a third of unionists do. The *Belfast Telegraph* commented that the results highlight "the fine line Sir Jeffrey Donaldson must walk" as the DUP works through a consultation period over the agreement. Some 73% of DUP voters say they would vote against the Framework if a referendum was held now, 16% say they would support it, with 11% 'don't knows'. 'No' voters are more likely to be older, male, and working-class. However, the poll also indicates some softening within the unionist community on returning to Stormont. Only 54% of unionist respondents said that the DUP should continue boycotting Stormont until changes are made to the Framework, down from 66% in a similar poll conducted by LucidTalk 6 weeks ago.

Section Three: Background Material and Further Reading

Background Material

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The Institute of International and European Affairs,

8 North Great Georges Street, Dublin 1, Ireland

T: +353-1-8746756 F: +353-1-8786880

E: reception@iiea.com W: www. iiea.com

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The Institute of International and European Affairs,

8 North Great Georges Street, Dublin 1, Ireland

T: +353-1-8746756 F: +353-1-8786880

E: reception@iiea.com W: www. iiea.com