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Implementing the Protocol and Windsor Framework

David Phinnemore



Background

The Protocol on Ireland/Northern Ireland, part of the Withdrawal Agreement between the United Kingdom (UK) and the European Union (EU), established a unique status for Northern Ireland within the UK-EU relationship: Northern Ireland is part of the UK outside the EU, but *de facto*, through regulatory alignment, in the EU customs territory and internal market for goods. Crucially, the arrangements avoid a physical hardening of the land border on the island of Ireland and are designed to protect the 1998 Belfast (Good Friday) Agreement.

Post-Brexit relations between the UK and the EU have been bedevilled by disagreements over the implementation of these unprecedented arrangements. A particular low point came in 2022 when the UK government introduced the [Northern Ireland Protocol Bill](#), which threatened to disapply core elements of the Protocol. The EU responded by initiating [infringement proceedings](#) and reiterating that any development in the wider UK-EU relationship depended on the UK fulfilling its Protocol obligations.

Central to the contestation is the differentiated treatment of Northern Ireland and, more specifically, the interaction between of the Protocol and the UK-EU Trade and Cooperation Agreement (TCA) and the emergence of an ‘Irish Sea border’ as a feature of the post-Brexit settlement. Goods entering Northern Ireland from Great Britain are entering the EU internal market and so EU formalities, checks and controls need to be applied. This creates friction on the GB-NI movement of goods

The disagreements, fuelled in 2021-22 by the hostility of the UK government under Boris Johnson towards the Protocol, led to serious strains in the UK-EU relationship. They were for the most part resolved by the adoption of the [Windsor Framework](#) in February 2023. The significance of the Windsor Framework lay not only in jointly agreed amendments to the Protocol and adjustments to how it would be implemented, but also in paving the way for developments in the wider UK-EU relationship, notably UK association with the [Horizon Europe](#) research programme. For the EU, delivering on obligations agreed as part of the Withdrawal Agreement, including with regard to Northern Ireland, was – and indeed remains – a pre-requisite for closer relations.

The Windsor Framework: still an issue

Implementation of the Windsor Framework – a term now also used to refer to the original Protocol – is ongoing with some challenging [milestones](#) still to be met, and all in a context of continued, albeit slightly milder, contestation from its longstanding unionist opponents in Northern Ireland. These milestones include customs formalities on goods moving to Northern Ireland from Great Britain (GB), revised arrangements for the movement of parcels, and additional ‘not for EU’ labelling requirements. Arrangements for the continued supply of veterinary medicines to Northern Ireland also need to be [finalized](#).

More generally, implementation involves a dynamic process of regulatory alignment on the part of Northern Ireland with EU law on the movement of goods, including the question of how the UK government chooses to [respond](#) to attempts by members of the Northern Ireland Assembly to withhold their support for relevant new EU legislation or to use the ‘[Stormont Brake](#)’ to block the application of amendments and replacement of EU acts.

There is also the question of how the UK government delivers on commitments to unionists, in particular to safeguard Northern Ireland's position in the UK internal market and the UK more generally. The most recent set of commitments were contained in the '[Safeguarding the Union](#)' Command Paper that provided the basis on which the Democratic Unionist Party (DUP) agreed in January 2024 to restore the Northern Ireland Assembly and enter a new Northern Ireland Executive having withdrawn in February 2022 in protest over the Protocol.

There is then the matter of the [Democratic Consent](#) vote in the Northern Ireland Assembly later this year on whether to continue with core elements of the Protocol/Windsor Framework. Even assuming the anticipated adoption of a consent motion, there will be a formal review of the functioning of the Protocol/Windsor Framework during the first six months of 2025. The scope of that review may now [include](#) consideration of any effects on 'the constitutional status of Northern Ireland' and 'the operation of the single market in goods and services between Northern Ireland and the rest of the United Kingdom'.

That the new UK government should be faced with so much Windsor Framework-related work in its in-tray reflects the ongoing challenge that the EU and the UK have faced in finding politically and legally acceptable means to minimize the disruption caused by Brexit on the island of Ireland, particularly with regard to Northern Ireland. Delivering political stability and economic prosperity when the peace process is fragile and faltering remains a struggle.

And although the Protocol/Windsor Framework enjoys majority [support](#) in Northern Ireland, it remains contested by many unionists. This was evident in the position [adopted](#) by the DUP in the recent general election and the challenge it faced from the more hardline Traditional Unionist Voice. So although the Protocol/Windsor Framework no longer grabs the headlines as it once did, implementation continues to pose practical as well as political challenges.

Looking ahead

Lessons can be drawn from the last four years in addressing these challenges. Top of the list is the need for the UK government to explain why the Protocol – and now the Windsor Framework – exists and what the arrangements entail. Previous UK governments generally failed to acknowledge the choices that needed to be made, notably regarding the so-called Irish [trilemma](#) of Brexit, i.e. the impossibility of being able to leave the EU customs union and single market and at the same time avoid formalities, checks and controls on the land border as well as on goods movements between Great Britain and Northern Ireland. Related is the central role that regulation and regulatory alignment play in allowing for the free movement of goods with the EU. Only through honesty can an incoming government hope to improve the parlous levels of [trust](#) in the UK government among Northern Irish voters – most recently only 3 per cent trusted the UK government to look after Northern Ireland's interests on the Protocol/Windsor Framework.

Second, the UK government needs to understand that the implementation of political commitments and legal obligations matter. The evident disregard shown by the Johnson and Truss governments on this count with regard to the implementation of the Protocol seriously damaged relations with the EU and with EU member states. Questions have also been raised as to whether the last UK government's actions in seeking to address unionist contestation of the Protocol/Windsor Framework have always demonstrated commitment to '[rigorous impartiality](#)' in the implementation of the Belfast (Good Friday) Agreement.

Third, the key to addressing the 'Irish Sea border' issue under the Protocol/Windsor Framework is the wider UK-EU relationship, something that most voters in Northern Ireland have increasingly come to recognise. Majorities among unionists, nationalists and 'others' [support closer ties](#) if they ease goods movements between Great Britain and Northern Ireland. The closer UK-EU terms of trade for goods are to those under the Protocol/Windsor Framework, the easier goods movements between

Great Britain and Northern Ireland become. Of fundamental importance here is a pragmatic rather than overly principled approach to the question of dynamic regulatory alignment.

Finally, the UK government needs to engage with the Protocol/Windsor Framework as a framework to address 'unique circumstances'. Fundamental here is the shared UK-EU commitment to protect the 1998 Agreement 'in all its dimensions'. This includes delivering on commitments to ensure that there is 'no diminution of the rights, safeguards or equality of opportunity' as a consequence of Brexit and that the necessary conditions for north-south cooperation on the island of Ireland are maintained. A more constructive engagement with Ireland would be valuable here, even if a closer London-Dublin relationship may not always be welcome among more hardline unionists. It would also help to consider how the full range of structures and processes provided for in the 1998 Agreement might be best used – or indeed adapted – to help address the unique status that Brexit, the Protocol, and the Windsor Framework have established for Northern Ireland.