

An update on the Windsor Framework for the CEEAC Committee

Katy Hayward, 26 June 2023

The UK-EU relationship

- The relationship between the EU and UK has been substantively improved by the Windsor Framework (WF).
- This can be seen in the political relationship, exemplified in remarks from Minister James Cleverly and Vice-President Maroš Šefčovič - co-chairs of the Joint Committee (for the Withdrawal Agreement) – at the [EU-UK Forum conference](#) on 12 June.
 - Cleverly described the relationship as one with ‘trust and respect’ between the two and said that the WF marked the beginning of a ‘new era’ in the relationship.
 - Šefčovič also [welcomed](#) the new conditions but noted that work didn’t finish with agreement on the WF, and stressed the need for ‘timely and faithful implementation of all its elements’.
- The relationship between officials has also improved and there is more regular communication between them, and an effort to ensure that there is consistent messaging between them on the details of its implementation. (see below)

Within the EU

- The EU passed the necessary legislation to implement the Windsor Framework in a particularly quick time frame involving cooperation between the Commission, Council and European Parliament. On 30 May the Council approved three core pieces of legislation on:
 - [SPS](#): to allow the green lane on agri-food products to be operationalised and the reduce requirements on the movements of pets from GB to NI.
 - [Medicines](#): to allow all medicines, including novel medicines, to be available in NI at the same time as in the rest of the UK and put on the market in accordance with UK rules and authorisation procedures
 - [Steel TRQs](#): to lift the 25% tariff that had been imposed on NI companies under EU safeguard measures for steel imports
- Some of the potential issues that could be problematic in the UK-EU relationship in the future were identified in [an opinion on the implementation reports](#) on the TCA from the European Parliament Committee on the Environment, Public Health and Food Safety.
 - It requested that the EU monitor the UK Emission Trading Scheme, the UK’s CBAM strategy and the UK’s Office for Environmental Protection.
 - It noted the Genetic Technology (Precision Breeding) Bill (March 2023), did not receive legislative consent from the Scottish Parliament or the Senedd.
 - It highlighted ‘how the European Parliament should exercise *maximum scrutiny*’ on the implementation of the TCA and WF ‘by participating actively in the Parliamentary Partnership Assembly’.
 - It also claimed that the European Parliament should participate in any future review procedure of the agreements.

Within the UK

- Concerned about the significant adjustments to be made in GB-NI movement of goods with the ending of the grace periods and the implementation of the WF, the UK Government was coming increasing under pressure from businesses to issue guidance. It published a tranche of information on 9 June.
- The guidance covers the essential areas for facilitating change:
 - [UK Internal Market Scheme](#): this is to replace and expand the UK Trader Scheme to include more GB-based businesses. It is to facilitate the 'green lane' for customs, i.e. reducing the need for customs paperwork on goods moving GB-NI. It will come into force on 1 October 2024.
 - [Retail Movement Scheme](#) (ReMoS): is to replace STAMNI (Scheme for Temporary Agrifood Movements into NI) from 1 October. This is the grounds for the green lane for the movement of retail agri-food and drink products into NI from GB.
 - There will be particular requirements for use of this green lane, more details on which will be published in July.
 - There will be a reduction in visual inspection checks from 100% to 10% in the first instance; physical inspections will be based wholly on UK authority risk assessment.
 - [Labelling](#): the ReMoS process will centre on labelling of agri-food products as 'Not for sale in the EU'. There are three phases to this.
 - The UK Government has committed to this being rolled out on a GB-wide basis, to reduce the risk of there being a hidden cost on goods entering NI. There will be labelling requirements for individual products, for boxes (where individual products not labelled) and in premises in NI.
- The UK Government has also published secondary legislation to implement:
 - [Democratic Scrutiny](#): this Statutory Instrument has only been published in draft form, although debated in both Houses in Westminster. It is to legislate for the democratic scrutiny measures included in the WF for the NI Assembly.
 - [Tariff Reimbursement Scheme](#): which will allow businesses to claim back duties they paid on goods entering NI from GB that were seen as 'at risk' of entering the EU but in the end did not do so. These claims will go back to January 2021 and will involve extremely large sums of money.
- There has been little public coverage of the Border Control Posts (the WF [Command Paper](#), for example, makes no mention of them) but they are necessary for the UK to be in compliance with commitments made under the WF.
 - One means by which the WF agreement was unlocked was through the passing of the [The Official Controls \(Northern Ireland\) Regulations 2023](#) legislation in January 2023. This sees the DEFRA Minister order the building of BCPs in Northern Ireland. In the meantime, *temporary SPS inspection facilities are to be operational in four ports in NI by 1 October 2023.*
- The timeline for the WF is now becoming more fleshed out in light of UK Guidance. It runs until end 2025, with phases for labelling and the two new 'green lane' schemes being the most clear so far (see Fig.1).

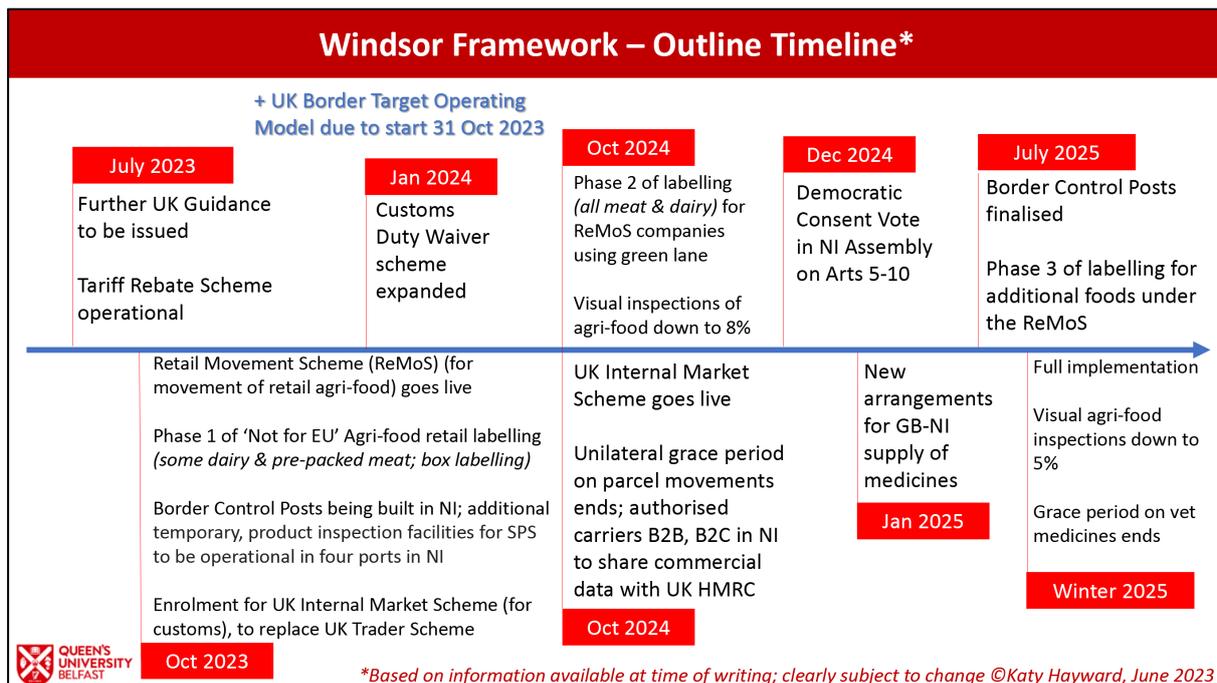


Fig. 1. Timetable for the implementation of the Windsor Framework (author's own)

UK-EU governance

- The **Joint Committee** met on 24 March (the co-chairs also met that day as the Partnership Council of the TCA). Their [joint statement](#) stressed the 'constructive atmosphere' and 'excellent cooperation' between them. It made joint decisions implementing the WF on 24 March, including on:
 - **State Aid**: to clarify that for Article 10 of the Protocol to apply, the measure of proposed state aid must 'have a genuine and direct link to Northern Ireland' with 'real foreseeable effects' on trade between NI and the EU, and for these effects to be 'material, and not merely hypothetical or presumed'.
- The **Specialised Committee** on the Protocol (now on the Implementation of the Windsor Framework) has met twice since the WF ([27 April 2023](#) and on [23 June 2023](#))
 - Notably the joint statements issued after the two meetings are almost identical, taking stock of the work undertaken and emphasising the importance of engagement with stakeholders in NI.
 - The first meeting of the *Enhanced Coordination Mechanism on VAT and Excise* (an iteration of the Specialised Committee, agreed under the WF) took place on 15 June 2023
 - The first meeting of the *Special Body on Goods* is yet to happen. This is intended to allow discussion of potential issues arising from UK divergence.
- The **Joint Consultative Working Group (JCWG)** continues to meet monthly and communicate on a weekly basis.
 - *Five new sub-groups* of UK and EU officials have been established to assist in its work. These cover: goods regulation, subsidy control, customs, agri-food and the Single Electricity Market.

The NI Assembly

- As noted above, the statutory instrument on ‘democratic scrutiny’ by the NI Assembly of the WF has been published in draft form. It is not expected to be finalised until the NI Assembly is restored.
 - This sees the creation of a **Democratic Scrutiny Committee** in the NIA, to consider the updates/amendments to EU law applicable under the Protocol/WF in Northern Ireland, with a task of reporting on those identified as potentially significant for NI.
 - The provision for a **Stormont Brake**: by which 30 or more MLAs from 2 or more parties in the NI Assembly can petition the UK Government to block an update/amendment to EU law applicable under the Protocol/WF from applying in NI. There are some limitations to the scope of applicable EU law which can be affected by the Stormont Brake.
 - The creation of an ‘**applicability motion**’, which means that the UK will automatically veto the addition of any new EU law to the Protocol/WF scope unless and until it is ‘unlocked’ by a cross-community vote in the NIA. This measure is a unilateral action by the UK Government and was not part of the WF agreement.
- The prospects for the return of a fully-functioning NI Assembly and Executive seem fairly unclear at the moment, with most expectations focused on Autumn 2023
 - There is expected to be a ‘**package**’ of measures from the UK Government to enable this to happen.
 - This is likely to include some form of financial package to soften some of effects of the severe [budgetary cuts](#) that have been imposed for 2023/24.
 - It is also expected to include secondary legislation in the UK Parliament that addresses some outstanding concerns of the DUP regarding the effects of the Protocol/WF (see below).
 - An exchange between DUP leader Sir Jeffrey Donaldson, and the Secretary of State for NI on [21 June 2023](#) in the House of Commons offers some illumination. In terms of movement of goods, the government is likely to restrict any such measures to the **UK Internal Market Act**, e.g. on non-discrimination of NI goods in GB. It is essentially the only scope that the UK has to make any trade-related adjustments without alarming the EU that it might be reneging on the WF.
 - The UK Government may potentially move other secondary legislation to reassure unionism (e.g. in the **Northern Ireland Act 1998**) but this would risk serious consternation from the other parties in NI as well as from the Irish Government, thus further threatening political stability in the region.
- If the Assembly and Executive are not restored by end January 2024, the Secretary of State for NI is obliged (according to the [Executive Formation Act 2022](#)) to call another Assembly election within 12 weeks.
 - In the meantime, under that Act, NI officials have been given powers to amended NI devolved law - a power they are loath to exercise.
 - NI officials are also tasked with the unenviable task of implementing a series of severe budgetary cuts.

- The Secretary of State and the Department of Finance have been issued with a [pre-action letter](#) by the Children’s Law Centre, arguing that, in the budget setting process for the year 2023/24, the Secretary of State ‘has failed in his responsibility to apply the principle of equality, including assessing whether the cumulative impact of the budget cuts is disproportionately affecting disadvantaged children’.

Within Northern Ireland

- The fact of a EU-UK agreement has been broadly welcomed in NI by businesses and parties but notably there has been widespread caution about championing or endorsing the Windsor Framework itself.
 - The latest polling from the [Post-Brexit Governance NI project](#) shows that the Windsor Framework has produced a slight but significant ‘warming’ to the Protocol (see Fig. 2).
 - The movement in support has come predominantly from among those who are ‘slightly unionist’, including UUP supporters.
 - UK-EU relations and British-Irish relations are seen in a more positive light, but concerns remain about the Protocol/WF impact on political stability.
 - Perhaps relatedly, the [NI Life and Times Survey \(2022\)](#) also showed for the first time that more people in NI expect a united Ireland to exist (45%) than expect the United Kingdom to exist (38%) in 20 years’ time.
 - The same survey also showed low levels of trust in the NI Executive and decreasing support for devolution within the UK as being the long-term policy for NI. 35% of respondents want to see that, compared to 31% wanting to see Irish unification (while 13% want to see direct rule).
- The **DUP** has notably remained sceptical.
 - It conducted a process of consultation on the WF and relayed the results of this to the Party’s executive at the end of March 2023. These have not been published but it is expected that they form the basis of any demands made by the DUP to the UK Government as conditions to be met before they allow the NI Assembly to sit and the NI Executive to function.
 - The DUP entered the local elections in NI (18 May 2023) on a platform of ‘restoring NI’s place in the UK’, which is seen as intrinsically connected to the Protocol. Indeed, ‘**Remove the NI Protocol**’ remains part of the party’s [5-point plan](#) ‘to build a better Northern Ireland within the Union’.
 - We know from polling that ‘removing the Protocol’ and not entering power-sharing until that happens is supported by the vast majority of DUP supporters, and was not ameliorated by the Windsor Framework.
 - The challenge for the party leadership, if they wish to see power-sharing restored, is how to re-enter the Assembly and Executive while the Protocol/WF remains in place and implemented – as committed to by both the UK and EU. This is an internal party matter as much as it is a UK one. Post-WF, the sense is that it is less of an EU concern now.

'The Protocol is on balance a good thing for Northern Ireland' (since March 2021)

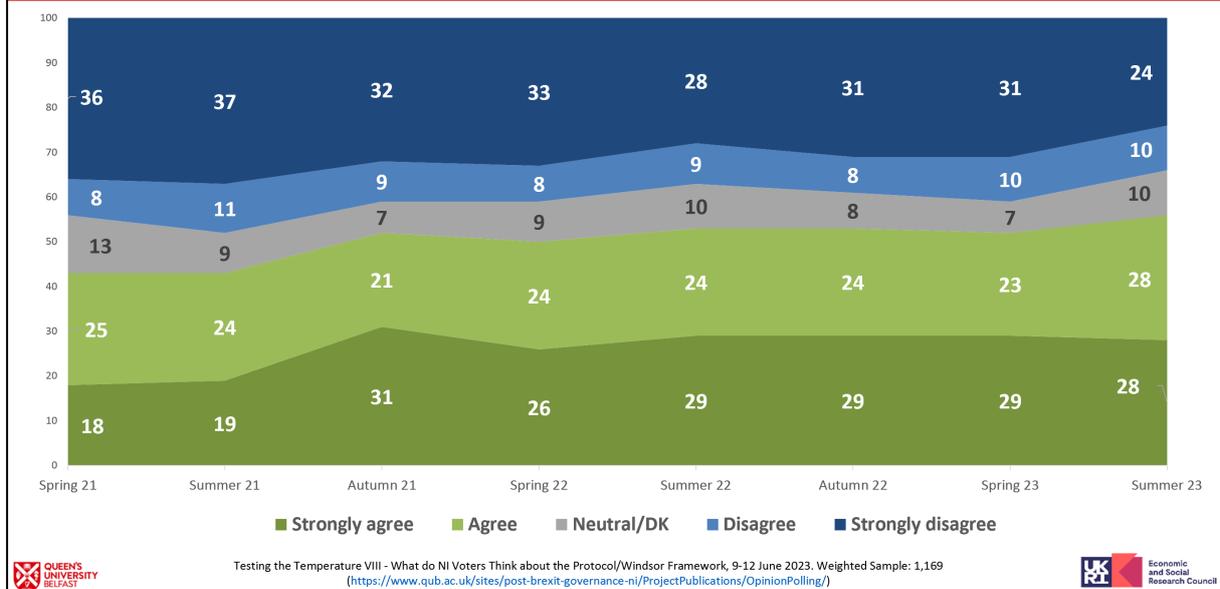


Figure 2. Post-Brexit Governance NI Polling since early 2021 showing opinion on the Protocol in NI, and the slight increase in support for it since the Windsor Framework was agreed

Implications for Scotland

- There are three main ways in which Scotland could be affected by the implementation of the Windsor Framework, as currently envisaged.
- *Agri-food Labelling:*
 - The roll out of GB-wide labelling on products 'not for sale in the EU' is something that has been objected to by business as costly. The labelling will be on agri-food goods for companies that are using the Retail Movement Scheme to bring products into NI. This predominantly affects supermarkets.
 - Minister James Cleverly has [admitted](#) that the decision to do so is a 'philosophical' one rather than a practical one, i.e. it comes in response to unionist concerns, confirming that NI is part of the UK.
 - As the labelling will apply to a widening range of products, and applied to individual items, over the course of the next two years, it is possible to conceive of some objections to this both on the basis of cost and principle coming from Scotland and Wales in particular.
- *UK Internal Market*
 - If the UK Government does bring forward secondary legislation to amend the UK Internal Market Act, this may well have implications for all-GB, e.g. in terms of preventing discrimination of NI goods in GB.
- *Tight timetable*
 - The pressures to implement the WF rapidly makes the challenges of rolling out the [Border Target Operating Model](#) (due to commence 31 October 2023) all the greater. If the BTOM is delayed further, the risks to Scottish consumers from not having proper controls on goods entering GB increases.