

‘A legal and democratic cheat’

The Windsor Framework – a legal and democratic sting

Having unpacked the substance of Rishi Sunak’s deal in an earlier article for *Briefings*, historian and contributory author Caroline Bell goes on to examine the legal and constitutional implications behind the agreement in this follow-up article.

Not only has the UK government agreed to implement a whole range of additional obligations on GB-NI trade which had not been enforced during previous grace periods, it has also **agreed to grant additional new rights under EU law on GB-NI trade.**

As if that weren’t bad enough, the government’s use of secondary legislation to implement the Stormont Brake in the form of a Statutory Instrument and to use that “*as the opportunity for Parliament to show approval for the Framework as a whole*” is a constitutional outrage.

The vote has now gone through, but the implications will reverberate as the author makes clear in her conclusions.

The article can be read in full below.

The Windsor Framework – a legal and democratic sting

By Caroline Bell

In a functioning democracy, one could be forgiven for believing that a sovereign Parliament would have the final say on whether foreign laws could be imposed on British citizens. But Rishi Sunak intends to bypass Parliament and use the Royal Prerogative to implement an international agreement which allows the EU to make new laws directly applicable in all parts of the United Kingdom.

A fundamental treaty change

The new Northern Ireland Protocol has been grossly misrepresented by the British government, to disguise the fact that it has now agreed to implement in full a whole range of checks and controls on GB-NI trade which have not been enforced to date under current grace periods.

In addition, it has agreed to grant new rights under EU law for the EU to be consulted on UK goods and tax legislation to monitor competition risks with the Single Market.

This has **nothing to do with operation of the Protocol** and is an EU demand which was specifically excluded from the Protocol in earlier negotiations. By sliding it into the Protocol now (rather than attracting attention by amending the Trade and Cooperation Agreement), the **very purpose** of the Protocol is called into question.

The legal objectives of the Protocol should be recalled:

*(Art 1.(3)).This Protocol sets out arrangements necessary to address the unique circumstances on the island of Ireland, to maintain the necessary conditions for continued North-South cooperation, to **avoid a hard border and to protect the 1998 Agreement in all its dimensions.***

However, with the creation of new directly effective EU regulations (see below), the commitment to consult the EU on new UK legislation to monitor competition risks and to build physical border infrastructure in Northern Ireland, it is clear that the Sunak government has colluded with the EU to develop the Windsor Framework as a vehicle for alignment with, and even subjection to, new EU laws which fall well outside the scope of matters covered by the Withdrawal Agreement Act which implements the Protocol in the UK.

And all without a vote in Parliament.

New directly effective EU laws imposed throughout the UK

The Windsor Framework drives a coach and horses through the Protocol's affirmation of the EU's and the UK's "shared aim of avoiding controls at the ports and airports of Northern Ireland, to the extent possible in accordance with applicable legislation **and taking into account their respective regulatory regimes as well as the implementation thereof.**"

There are three new **EU regulations** to enforce the new rules agreed in the WF on GB-NI trade. EU regulations have direct effect in member states. But the UK is not an EU member state, and nor is Northern Ireland, even though NI is subject to the EU regulations listed in Annex 2 of the Protocol.

The EU's new draft phytosanitary Regulation, "provides **for specific rules for the entry into Northern Ireland from other parts of the United Kingdom** of certain consignments of retail goods, plants for planting, seed potatoes and machinery and vehicles which have been operated for agricultural or forestry purposes as well as non-commercial movements of pet animals, **and this can only be achieved by adopting a new Regulation of the European Parliament and of the Council.**"

How on earth have government ministers swallowed this manifest untruth? The one thing the EU **cannot do** is legislate for the United Kingdom. Least of all when the legal basis for this new EU regulation is contained in Article 43(2), Article 114, and Article 168(4)(b) of the Treaty on the Functioning of the European Union – which no longer applies to the UK.

This new SPS regulation requires the UK to build SPS inspection facilities in Northern Ireland (in breach of the aim of the Protocol), enforce separate certification and labelling for foods sent from GB to NI, and police the certification and monitoring of every consignment of these new “permitted products” on arrival in Northern Ireland.

As well as imposing direct EU law on the United Kingdom government, **the EU also directly regulates UK traders outside Northern Ireland who are not subject to the provisions in Annex 2, by strict new labelling rules for goods made (and sold) in the UK.**

This EU regulation would appear to be both **out of scope of the Protocol and ultra vires**. It is not covered by Annex 2 of the Protocol, which allows for the regulations therein to be amended or replaced, and it cannot be enforced as an amendment to the Protocol, since it legislates for the operation of the UK’s internal market, which is governed by the UK’s Internal Market Act. The legal basis for the Regulation also has no force in the United Kingdom.

And yet the British government has apparently accepted that the Windsor Framework will be implemented, without a vote in Parliament, through new EU laws which usurp the UK’s legal and parliamentary sovereignty.

The legal and democratic cheat

A House of Commons briefing on the Windsor Framework published

on 17 March is illuminating on the legal and democratic cheat.

“Rishi Sunak said that there would be a House of Commons vote on the Framework “at the appropriate time and that vote will be respected” ...

It then goes on to assert, with no authority, that **“a vote on the Framework as a whole is not required by law”**, although “new UK legislation will be required to implement some of the Framework, for example amending the Northern Ireland Act 1998 to implement the Stormont Brake. The Government has announced that it will introduce secondary legislation to implement the Stormont Brake in the form of a Statutory Instrument (SI).

A motion to approve the SI will be moved in the House of Commons on Wednesday 22 March, with a 90-minute debate beforehand. The Government has said that this debate and vote on passing the SI will serve as the opportunity for Parliament to show approval for the Framework as a whole.”

The Commons briefing goes on to state that: **“The EU will also need to pass into law the proposed regulations in** areas like medicines, checks on animals and plants, and medicines, which need to be adopted by the European Parliament and the Council of the EU. The EU Council must also approve two EU Council Decisions.”

These two Council decisions are scheduled for adoption at the meeting of the General Affairs Council **on 21 March 2023**. (i.e., **before the government’s tabling of the Stormont Brake SI which is regarded “as a vote on the whole Framework”**).

The EU-UK Joint Committee will then formally adopt the recommendations and decision **before the end of March**.

Abuse of the Royal Prerogative

This legal and democratic scam is an affront to anyone who

values our democracy, whether they voted for Brexit or not. It clearly demonstrates that the Sunak government is repurposing the Northern Ireland Protocol by using of the Royal Prerogative to create **a new treaty with the EU which provides a vehicle for the EU to enforce direct EU regulation on the United Kingdom**. What next – a “London Framework” which signs us back into the Single Market and the Customs Union without a vote in Parliament, let alone a referendum?

In getting the King to endorse the Windsor Framework and accept this subjugation of Parliament to EU law, the government has called into question the delicate constitutional balance between the monarchy, Parliament and the British people, and seriously compromised King Charles’s position as head of state even before his coronation.

Remedies

MPs need to act fast, given the gallop at which this fundamental change to our laws and constitution is being pushed through. A legal challenge – potentially on the basis of the Miller judgement, which required an Act of Parliament before Article 50 could be triggered – would seem to be immediately necessary unless the government halts the implementation process and tables legislation to amend the Withdrawal Agreement Act, requiring a full debate and a vote in Parliament.

The Windsor Framework materially alters the scope of the Northern Ireland Protocol, curtails trade freedoms granted by primary legislation, and breaches the rights of British citizens to democratic self-government by allowing direct Regulations made by the EU to be enforced in the United Kingdom without parliamentary scrutiny or approval.

By Caroline Bell for Briefings for Britain, 23 March 2023

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The original article can be found [here](#).

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