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# A BRIEF NI GUIDE TO BREXIT, THE PROTOCOL AND THE WINDSOR FRAMEWORK







Whether you voted in the referendum on 23 June 2016 or not, the result of it has turned out to be very important for everyone living in Northern Ireland. That referendum was on whether the United Kingdom should remain in the European Union or leave it. The vote in Northern Ireland was to remain (56%) but the overall UK vote was to leave or 'Brexit' (52%). In fact, Northern Ireland's position was to prove to be the most difficult issue for the UK and EU to resolve in the Brexit negotiations. This is partly because of its complex politics, but also because of its geography too. There have been two agreements made by the UK and EU to try to address Northern Ireland's unique post-Brexit situation: the Protocol and the Windsor Framework. This leaflet explains what they are and how they affect Northern Ireland.



## What does Brexit have to do with borders?



Borders take two forms when it comes to the movement of goods. **Customs** borders are there to stop dangerous or illegal goods entering; customs officers also make sure that duties are paid on goods on which customs tariffs apply (to make them more expensive than home-produced ones).

Regulatory borders are about the **standards** that goods for sale have to meet, particularly those relating to food, medicines, plants or animals. For example, some types of pesticides that are used to grow food crops more cheaply or some hormones that may be used to treat animals in other countries are banned in the EU because they might be harmful to humans. The paperwork that accompanies such food or meat when they are brought across a border is

intended to show that they are free from banned treatments or disease. To double check this, closer inspections and scientific tests may be carried out on those products at a 'Border Control Post'. Without such controls, consumers cannot be so sure of the safety of food they are eating.

All EU member-states follow broadly the same rules, so there's no need to have hard borders between them. Having to follow the same rules is one reason why some people voted for Brexit. Instead of having hard borders between its members, the EU has hard borders with its outside neighbours to stop anything unwanted coming in. Leaving the EU means that the UK can set its own rules, including producing and importing things that wouldn't be allowed in

the EU. As a consequence, harder borders are needed between the UK and the EU. In practice this means paperwork, checks and controls on what is moving from one to the other.

The UK-EU border is mainly a 'sea border' between Britain and the continent but it is also runs across the island of Ireland, between Northern Ireland and Ireland. Putting the type of **checks and controls** usually required at the EU's external border today along the 499km land border with some 270 crossing points was deemed impossible and undesirable by both the EU and the UK, so they came up with the Protocol on Ireland/ Northern Ireland as part of their Brexit deal.





## What is the Protocol?

The **Protocol on Ireland/ Northern Ireland** formed part of the Brexit divorce (the **Withdrawal Agreement**) between the UK and EU in 2019. The Protocol came into force on 1 January 2021, alongside the **Trade and Cooperation Agreement**, which is the UK-EU treaty that sets the terms for their post-Brexit relationship, i.e. how they plan to trade and cooperate after the divorce.

Northern Ireland (NI) is no longer in the European Union and remains an integral part of the United Kingdom, but the Protocol treats Northern Ireland differently to other parts of the UK after Brexit in three main ways.

1. Article 2 of the Protocol sees the UK Government commit to making sure that the **rights and equality protections** that citizens in NI were guaranteed under the 1998 Belfast/Good Friday Agreement are upheld, even if the UK changes its own human rights law, which the Government has said it wishes to do. This commitment applies to a range of rights that are covered under EU law, including protecting against discrimination on the grounds of gender, religion, race, age or disability. The Equality Commission and Human Rights Commission in Northern Ireland work together as a 'dedicated mechanism' to make sure that these rights are not reduced over time.



Map of the Irish border, which is part of the UK's border with the EU

2. Northern Ireland continues to have free access to the EU market for goods, which means no border controls are necessary on goods moving directly between NI and the EU. Unlike businesses based in other parts of the UK, businesses here can sell freely into the EU as well as Great Britain [GB]. In order to allow this NI **continues to apply some EU laws**. Almost all these relate to standards in the production of goods; the purpose of them is make sure that NI products meet the EU's criteria for sale in its member-states. This means, for example, that pesticides and fertilizers banned from use on crops in the EU are also banned in NI even if Westminster changes the law to allow them in England.

The Protocol is managed through three joint UK-EU bodies. At the top, the **Joint Committee** makes decisions based on recommendations from the **Specialised Committee**. The **Joint Consultative Working Group (JCWG)** is where the EU and UK inform each other about updates and changes to the law that applies in Northern Ireland relevant to the Protocol/Windsor Framework.





## What is the Windsor Framework?

The Windsor Framework was announced by the British Government and EU Commission on 27 February 2023. It followed months of negotiations between them to address some of the difficulties that had arisen around the Protocol. It does not replace or wholly rewrite the Protocol but has made changes to it to try to reduce its impact on Northern Ireland, particularly in terms of trade.

The Windsor Framework is not a treaty but a set of joint UK-EU decisions and declarations, plus some changes to the law in the EU and UK to bring it into effect. It is meant to be rolled out in phases between 2023-2025.

### WHAT DIFFERENCE DOES IT MAKE?

The Windsor Framework recognises that some of the EU's expectations from the Protocol were too strict, and that it needed to allow more flexibility for the fact that NI is part of the UK and that GB remains Northern Ireland's biggest trading partner by far. It makes some practical changes to the Protocol to reflect this.

**i) Goods not entering the EU:** If businesses bring goods for sale in NI that won't be moved outside the UK, they can register as a 'trusted trader' under the new 'UK Internal Market Scheme' and thus use what is called a 'Green Lane'. This allows them to move goods across the Irish Sea without the customs paperwork usually needed to cross the EU's border.

In addition, there is a new UK Retail Movement Scheme for traders bringing agri-food products into NI that would traditionally require a heavy amount of paperwork, checks and controls. This means that registered supermarket lorries, for example, can bring loads of goods for sale in NI with minimal paperwork. They can also bring in products that would

otherwise not be allowed into NI from outside EU, e.g. chilled Lancashire sausages. One condition of this is that such products are labelled as not being for sale in the EU. These labels are expected to become common across the UK in by mid-2024.

If businesses want to make sure that their goods still meet EU standards (e.g. NI farmers bringing in grain from GB to feed their cattle, because they want to sell their milk in the EU) they will follow the EU's border rules, e.g. completing more paperwork and checks. These goods will come in from GB as 'Red Lane' goods.

**ii) Pets, Parcels, Plants & Medicines:** Through the Windsor Framework, the EU has made rules specifically for Northern Ireland so that some things can enter NI from GB that would be banned from entering the EU from outside. For example, a pet being brought from GB to NI will have to be 'declared', e.g. when booking a ferry ticket, but won't require special paperwork.

Parcels sent from GB businesses to consumers in NI won't need customs declarations, but parcel couriers will be required to be able to show that those parcels stay in NI. Parcels can continue to be sent freely between friends and family across the UK with no difference for NI.

NI will be fully integrated into the UK-wide regime for licensing and selling medicines for humans. And some previously-banned plants and seeds from GB can be sold in NI garden centres for planting in NI.

**iii) VAT, Excise & subsidies:** EU rules on VAT, Excise and state aid (i.e. government subsidies) apply in NI under the Protocol. In order to ensure NI businesses can trade in the EU without being at a

competitive advantage. Otherwise, for example, a NI business could get a UK Government grant which could enable it to sell its goods in the EU at a lower price than its EU-based competitors. There is now a carve-out from some of these rules under the Windsor Framework which allows NI to benefit from UK VAT cuts or reduced excise duty charges. For example, if the UK Government offers subsidies on things that can't be easily moved across the border, then the EU shouldn't object.

**iv) Information/engagement:** The UK and EU have committed to new means of engaging with people in NI over the Protocol/Windsor Framework. The EU has promised a new dedicated webpage and NI access to information sessions and online consultations. Such engagement could be a way by which businesses and community organisations can be better informed and make their views on specific issues or proposals known.

The NI Assembly will also have a new **Democratic Scrutiny committee** formed by MLAs to monitor changes to EU law that might affect Northern Ireland. Both the UK and EU have agreed to find ways to hear directly from people in Northern Ireland about the impact of the Windsor Framework

**v) Crossing the Irish border:** There is a risk that some products banned in the EU but allowed into NI through the 'Green Lane' may end up on the other side of the border. The EU and UK will be monitoring this but have committed to avoiding checks and controls at the Irish border. For ordinary travel across the border, no special insurance or new requirements are needed, though it is always a good idea to check the terms of your motor insurance policy. Both

the UK and EU are introducing an additional electronic travel form for completion by tourists but these will not be required of people living on the island who wish to cross the border. Change in UK immigration rules mean new requirements on non-British or non-Irish citizens working or accessing services in NI. For more information, please look at the sources recommended below.

### **WHAT MIGHT WE NOTICE UNDER THE WINDSOR FRAMEWORK?**

Agri-food products from GB that are sold in NI shops will have to be labelled to show they are not for sale in the EU. This will start to be introduced from Autumn 2023, beginning with milk and fresh-packaged meat.

There will be new facilities built in some NI ports for inspections on goods in the Red Lane or on those suspected by customs officers of unlawfully using the Green Lane. The number of inspections is expected to reduce as the system beds in.

### **WHAT IF THERE IS A PROBLEM?**

One reason that we have new terms for trade under the Windsor Framework is because the UK has committed to share more information with the EU about what goods are entering NI from GB. In addition to this, there will also be closer cooperation between UK and Irish authorities to make sure there is no increase in smuggling across the Irish border.

If the EU is concerned about specific risks based on information shared, it can ask for certain lorries to be checked when they arrive in Northern Ireland. If it has concerns about the wider process, then it will raise these issues with the UK and they will try to resolve them amicably.

If the UK is concerned about 'diversion of trade' (i.e. GB businesses choosing to trade less with NI under these conditions, or vice versa), then it can raise this with the EU with the aim of addressing this in a 'mutually agreeable' way. These discussions



happen first between civil servants in the EU and UK but if they are difficult to resolve, the senior political leaders overseeing the Windsor Framework will hold discussions (i.e. in the Joint Committee).

If they fail to find agreement there, part of the Windsor Framework may be suspended in an area relevant to the dispute (e.g. if there are concerns about misuse of the Green Lane by some types of retailers, they may have to use the Red Lane instead). Even then, the UK and EU will continue to try to find a joint solution.

### **WHAT DOESN'T CHANGE WITH THE WINDSOR FRAMEWORK?**

The Irish land border remains open, with no checks and controls, and NI has free access to both the EU and GB markets. Goods being produced and placed for sale in NI will still need to meet EU standards, so a portion of EU laws still apply in Northern Ireland. There will be checks and controls on goods entering NI from GB that are not eligible for the Green Lane, e.g. that may be sold outside the UK.

If there is a dispute over the application of EU law where it still applies, the EU's Court of Justice (CJEU) may be referred to to make a judgement at the end of a process of dispute resolution. The UK could take the EU before the CJEU too. And NI businesses can take EU businesses to the CJEU if they think they are being discriminated against under the Windsor Framework.

### **WHAT IS THE STORMONT BRAKE?**

Laws are often updated, adjusted or replaced to reflect changing circumstances since they were made. The same is true of EU law. The updates and adjustments made to EU laws that are included in the Protocol automatically apply in NI. Under the Windsor Framework, NI has more direct input and say over this process. This includes through early consultation by the EU, and through better communication between UK, EU and NI civil servants working in the area.

The new Democratic Scrutiny Committee in the NI Assembly will be notified of updates to EU law applying in NI. If the Committee considers the change a significant one, MLAs can make recommendations as to how difficulties might be resolved.

If the Assembly is sitting, MLAs can use a new mechanism called the 'Stormont Brake'. If 30 or more MLAs from at least 2 parties object to an update to an EU law applying in NI, they can request that this be blocked by the UK Government. They have to make a case that this update would significantly and negatively impact people in NI. If the Government agrees, then that update will not apply in NI.

There cannot be any new EU law added to the Protocol without the UK Government's agreement and unless there is a cross-community vote in the Assembly endorsing it (if the Assembly is sitting).





## Further Reading

### **ADVICENI:**

A general advice hub that includes information on EU Settlement Scheme

<https://www.adviceni.net>

### **BORDER PEOPLE:**

Practical information from the Centre for Cross Border Studies for those who regularly cross the Irish border, including for work

<https://borderpeople.info/>

### **BREXIT AND BEYOND:**

Information from the NI Assembly research team on the latest developments on Brexit, especially relating to change that affects politics and policy in NI

<http://www.niassembly.gov.uk/assembly-business/brexit-and-beyond/>

### **LAWCENTRENI:**

Access legal information and help on such things as employment and social security post-Brexit.

<https://www.lawcentreni.org/>

### **NI DIRECT 'YOUR RIGHTS AFTER BREXIT':**

A brief summary with links to other information.

<https://www.nidirect.gov.uk/articles/your-rights-after-brexit>

### **POST-BREXIT GOVERNANCE NI:**

For more information on the Protocol, explainers, and updates on its impact on N.Ireland.

<https://www.qub.ac.uk/sites/post-brexit-governance-ni/>

### **UK IN A CHANGING EUROPE:**

Information and expert commentaries on post-Brexit UK, its relationship with the EU and wider world.

<http://www.ukandeu.ac.uk>





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