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Alex Maskey MLA
Speaker of the Northern Ireland Assembly

By email to: speaker@niassembly.gov.uk

2 February 2024

Dear Alex,

WINDSOR FRAMEWORK (DEMOCRATIC SCRUTINY) REGULATIONS

1. Since the announcement of the Windsor Framework in February last year, the UK Government has been working to operationalise the democratic mechanisms contained within it including the Stormont Brake. In March 2023, Parliament approved the draft Windsor Framework (Democratic Scrutiny) Regulations. I can confirm that I made those Regulations yesterday, bringing them into force today.
2. The Regulations insert Schedule 6B into the Northern Ireland Act 1998 to set out a procedure for 30 or more members to initiate the Brake, and provide for a new Northern Ireland Assembly scrutiny process to support MLAs in their work, including the creation of a new Windsor Framework Democratic Scrutiny Committee. The UK Government will be under a legal obligation to trigger the Brake when a notification by members meets the relevant conditions. And, except in exceptional circumstances, the Government will be under a duty to veto the application of any new EU rule that would create a new regulatory border and that has been brought to the Joint Committee under the Article 13(4) process, unless there is cross-community support for the new rule in the Assembly.
3. To ensure that the arrangements in the Regulations including the Brake are fully operable at the point at which the Northern Ireland institutions are restored, we have now finalised the practical details of how the UK Government intends to approach these matters once Schedule 6B to the Northern Ireland Act 1998 is in effect. This information is set below.

Information exchange

4. The UK Government will endeavour to ensure the Assembly has timely access to all the necessary information and analysis it needs to carry out its work, including from the EU. To facilitate this, I intend to put in place dedicated information sharing arrangements which will commence following the appointment of members to the new Windsor Framework Democratic Scrutiny Committee.

Notification of proposed amending or replacement acts

5. The Brake is available for relevant amending or replacement EU goods acts which would otherwise apply under Article 13(3) of the Windsor Framework, i.e. those that would amend or replace an existing EU goods rule that applies in Northern Ireland, as set out in Article 13(3a) of the Framework. This covers areas of law that are not devolved. Nonetheless the Government has decided that it is right to provide the Assembly with a broader remit than simply to focus on devolved issues such as agri-food regulations.
6. The UK Government intends to notify the Committee of relevant proposed EU Regulations and Directives (as envisaged by paragraph 6(1)(a) of the Schedule) on a weekly basis, in the same way as the UK Parliament is informed, to allow for early analysis of proposed acts to be undertaken by the Committee.
7. Following notification of these proposed acts, the UK Government intends to provide the Committee with the same information and analysis as is provided to Parliament, including through explanatory memoranda.

Notification of adopted amending or replacement acts

8. Following publication by the EU of those relevant amending or replacement acts (as envisaged by paragraph 6(1)(b) of the Schedule), the UK Government intends to notify the Committee, also on a weekly basis.
9. The Committee may wish to request that notifications are paused for a given period while the Assembly is in recess given that, once notified by the UK Government of the adoption of an act, the Committee has a period of five days to decide whether or not to hold (or continue to hold) an inquiry into it. This should be set out in writing from the Chair of the Committee to the Secretary of State for Northern Ireland ahead of the recess period. It should be noted that any such pause would reduce the amount of time available for the Committee to hold an inquiry.

Notification of proposed new acts under Article 13(4)

10. For acts that fall to the consideration of the Joint Committee under the process set out in Article 13(4) of the Framework (either owing to the Brake having been applied, or because the EU has proposed to add a new piece of legislation), the UK Government intends to notify the Assembly of this.
11. For these proposed new acts, the UK Government intends to provide the Committee with the same information and analysis as is provided to Parliament, including through explanatory memoranda.

Operating the Brake

12. As provided for in paragraph 12 of the Schedule, the relevant procedural and substantive requirements should be met by members applying to trigger the Brake.

Procedural requirements

13. A notification must be in writing and must be agreed to by no fewer than 30 members of the Assembly. These must include any of the following—
 - a. one member who belongs to a political party and one member who belongs to a different political party,

- b. one member who belongs to a political party and one member who does not belong to a political party and did not belong to a political party when returned as a member of the Assembly, or
 - c. two members who do not belong to a political party and did not belong to a political party when returned as members of the Assembly, but must not include the Presiding Officer or a deputy Presiding Officer.
14. The notification should be sent to the Presiding Officer no later than ten working days before the end of the scrutiny period.
 15. If the criteria in the above two paragraphs have been met, the Presiding Officer must send the notification to the Secretary of State for Northern Ireland no later than nine working days before the end of the scrutiny period, and publish the notification.
 16. It should be noted that a lead member should be specified on any notification made to the Presiding Officer in case any further information is required.

Legal thresholds

17. When submitting a notification, members will need to include evidence that it meets the requirements set out in Article 13(3a) of the Windsor Framework, and the Article 13(3a) declaration.

Informing the EU

18. Following receipt of a notification to operate the Brake, the UK Government may request further information if needed. This may be sought from the specified point of contact. Where the legal requirements have been met, the UK Government must notify the EU (as envisaged by paragraph 15 of the Schedule) and the application of the act in Northern Ireland will automatically be suspended, following the relevant domestic and international law.
19. If the requirements have not been met, the Secretary of State will, without undue delay, provide written reasons to the Presiding Officer who will inform the members. This does not prevent a separate notification being made in relation to the same act.
20. Following a notification to the EU that the Brake is being applied, should the EU request any further explanation, the UK Government may request this from the specified point of contact. Such a request by the EU can delay the disapplication of the relevant law only until the UK Government has provided the further information requested.

Consideration of acts in the Joint Committee

21. Following the operation of the Brake, the EU legislation in question can then only be applied in Northern Ireland through the procedure set out in Article 13(4) of the Windsor Framework. This ensures the EU cannot impose the act without explicit UK agreement in the Joint Committee. Part 4 of new Schedule B ensures the Northern Ireland Assembly will be in the driving seat in deciding whether and how that veto should be used. And this democratic check also applies to any new legislation which the EU deems to be in scope of the Framework and proposes to add under the 13(4) process.
22. Prior to consideration of any acts under the 13(4) process in the Joint Committee, cross-community agreement for the EU act to apply in Northern Ireland can be expressed to the UK Government through an applicability motion, within a minimum period of five weeks from the day on which the relevant notification (as envisaged by paragraph 19(2) of the Schedule) is made to the Assembly (though the time period can

be extended). An applicability motion must be selected for debate and vote before the end of the relevant period where it is tabled.

23. To support the Assembly in reaching a judgement on the EU act in question, the UK Government intends to provide the Committee with the same information and analysis that it provides to Parliament.
24. If the Assembly has not expressed cross-party support for the EU act via an applicability motion, the UK Government will veto addition of the act to the Framework at the Joint Committee unless agreeing to it would not create a new regulatory border, or if exceptional circumstances apply. Exceptional circumstances means just that, and it could not be invoked in the ordinary course of things. Such circumstances would include the absence of an Assembly or Executive. Any decision to rely on exceptional circumstances would need to be based on the principles of good decision making and the decision could be subject to judicial review.
25. If proposing to add a new rule to the Windsor Framework on the basis that it would not create a regulatory border or because there are exceptional circumstances, a Minister must make a statement to Parliament before doing so, explaining why they are of the opinion that either of those conditions have been met. In such a scenario, the Government intends to also notify the Assembly of this decision.

Conclusion

26. The Government intends to publish the arrangements set out within this letter for transparency so that Assembly Members and the public can understand how the powerful new democratic scrutiny arrangements contained in the Windsor Framework will operate. I look forward to seeing them put into practice.
27. I am copying this letter to Lesley Hogg, Clerk and Chief Executive of the Northern Ireland Assembly.

Yours sincerely,



**THE RT HON CHRIS HEATON-HARRIS MP
SECRETARY OF STATE FOR NORTHERN IRELAND**