



The ‘Windsor Framework’ ‘Stormont Brake’ SI

- The new ‘Stormont Brake’ under the ‘Windsor Framework’ only applies to amended or replacement EU laws, that are currently applied automatically via ‘dynamic alignment’.
- The new ‘Stormont Brake’ under the Windsor Framework only applies to small fraction of the Protocol – mostly goods regulations. It does not cover important areas of state aid, most customs, vat, electricity, trade defence measures etc.
- The new Windsor Framework is not a Stormont ‘veto’ as it is subject to numerous conditions and tests including binding arbitration if the EU disagrees with its use.
- Separate to and not included in the Windsor Framework, the SI also introduces a domestic UK procedure to regulate the way the UK uses the Joint Committee on ‘new EU laws’, introducing a Stormont element. (This is contained in Part 4 of the SI)

Background

The “Stormont Brake” was a key part of the “Windsor Framework” deal announced on the 27 February 2023. The Brake is contained in a newly inserted Article 13 (3) a¹, which sets out the procedures required for use. This is complemented by a unilateral declaration in the Joint Committee setting out the conditions for use in Northern Ireland².

Rt Hon Rishi Sunak MP:

“these arrangements provide for the appropriate sovereignty in Northern Ireland for the Stormont Assembly to have that say. It is more than a say; it is an ability for the Assembly to block new EU goods laws as they come down the pipe if Assembly Members are not happy with them.”

“It is for us to make the determination whether the threshold has been met.”

Hansard 27 February 2023

Chris Heaton Harris MP:

“It's a veto... If it's going to affect Northern Ireland in a significant way we would veto EU law,”

Sophy Ridge On Sunday on Sky News 5 March 2023

¹ Unilateral Declaration Annex 1 paragraph 1, page 23:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1141824/Draft_Decision_of_the_Withdrawal_Agreement_Joint_Committee_on_laying_down_arrangements_relati_o_the_Windsor_Framework.pdf

² New Art 13 (3) a : Page 4. (ibid). There are two extra declarations in the JC binding the UK to ‘good faith’ and arbitration.

What is covered by the Windsor Framework (Art 13 (3) a) Brake and the new domestic brake contained in the SI?

	EU laws in scope of the new WF Stormont Brake: [Mostly goods regs contained in Annex 2, the 3 rd para of Article 5 (1) on Customs on personal property and the Customs regulation.]		EU laws outside of the scope of the new WF Brake	
	Laws already in place under the protocol Annex 2	Replacements and Amendments to EU laws already in Annex 2.	New EU laws	State Aid, TAX, Electricity, Trade Defence and most Customs provisions.
Current state	Cannot be changed. (No Brake)	Dynamic alignment under Art 13 (3) of the NIP	Goes to Joint Committee where UK can say no subject to consequences. Current Art 13 (4)	New Laws go to Joint Committee (See New EU Laws to the left) Out of scope amended and replacement laws apply automatically (no brake)
New Post Windsor Framework	Cannot be changed (No Brake)	New Stormont Brake under the new Art 13 (3) a, then to the Joint Committee under Art 13 (4) SEE STMONT brake FLOW CHART BELOW	Art 13 (4) remains. Now subject to Part 4 of the SI – adding Stormont involvement in the UK’s decision - a UK internal matter outside of the Windsor Framework	No change
Where in the SI is this power contained?³	Not included	PART 3 Sets out, for the purposes of Art 13 the process by which MLAs may seek to prevent the application of a replacement EU act.	PART 4 Ministerial consideration of new EU acts in the Joint Committee	Not included



³ The Windsor Framework (Democratic Scrutiny) Regulations 2023;
<https://www.legislation.gov.uk/ukdsi/2023/9780348246322>

Two brakes – one in the Windsor Framework and one added domestically:

- **Brake 1: The Windsor Framework Brake:** The Windsor Framework’s new Brake is designed to cover amendments and replacements to a narrow selection of current EU laws that under the current protocol are applied automatically to Northern Ireland. Instead of being automatically applied (not going to the Joint Committee) the laws will now potentially be subject to a Stormont process detailed below.
- **Brake 2: The SI ‘Part 4’ Brake:** The SI introduces a new domestic procedure to govern the use of the UK’s seat in the Joint Committee when it considers new EU laws. The UK’s position in the JC for this purpose is not new and not a part of the ‘Windsor deal’. The Minister may override the Stormont element of the Brake in two circumstances:

Article 18 (2) of the SI:

“(a) there are **exceptional circumstances** that justify the adoption of the decision in the absence of an applicability motion having been passed, or

(b) the new EU act would **not create a new regulatory border** between Great Britain and Northern Ireland.”⁴

The power to override the Brake if it would ‘not create a new regulatory border’ when read with the UK’s self-imposed obligation under s. 46 of the UK Internal Market Act to “*to facilitate the free flow of goods between Great Britain and Northern Ireland*” and the new commitment for “*proactive steps to avoid new barriers to Great Britain-Northern Ireland trade*” might lead to another pressure for the default position to be mainland GB alignment in the face of a new EU law.⁵

Windsor Framework Democratic Scrutiny Committee

The SI also introduces a new Stormont Committee to look at the new processes that will write reports that will look at the tests imposed on the use of the WF Brake. These reports will include all parties, including those opposed to the use of the Brake and could be used by the UK Government or EU to argue that the following tests in s.13 (3) a have been met:

- “(i) significantly differs (in whole or in part) from the content or scope of the EU instrument which it amends or replaces, and
- (ii) would have a significant impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist...”

This committee will be another impediment to the use of the Windsor Framework Brake and to some extent fetter the discretion of a UK government minded to block a new EU law in the Joint Committee.

⁴ ““exceptional circumstances” includes circumstances in which the Assembly has, as its first business, failed to elect from among its members a Presiding Officer and deputies or there is no First Minister and deputy First Minister in office”

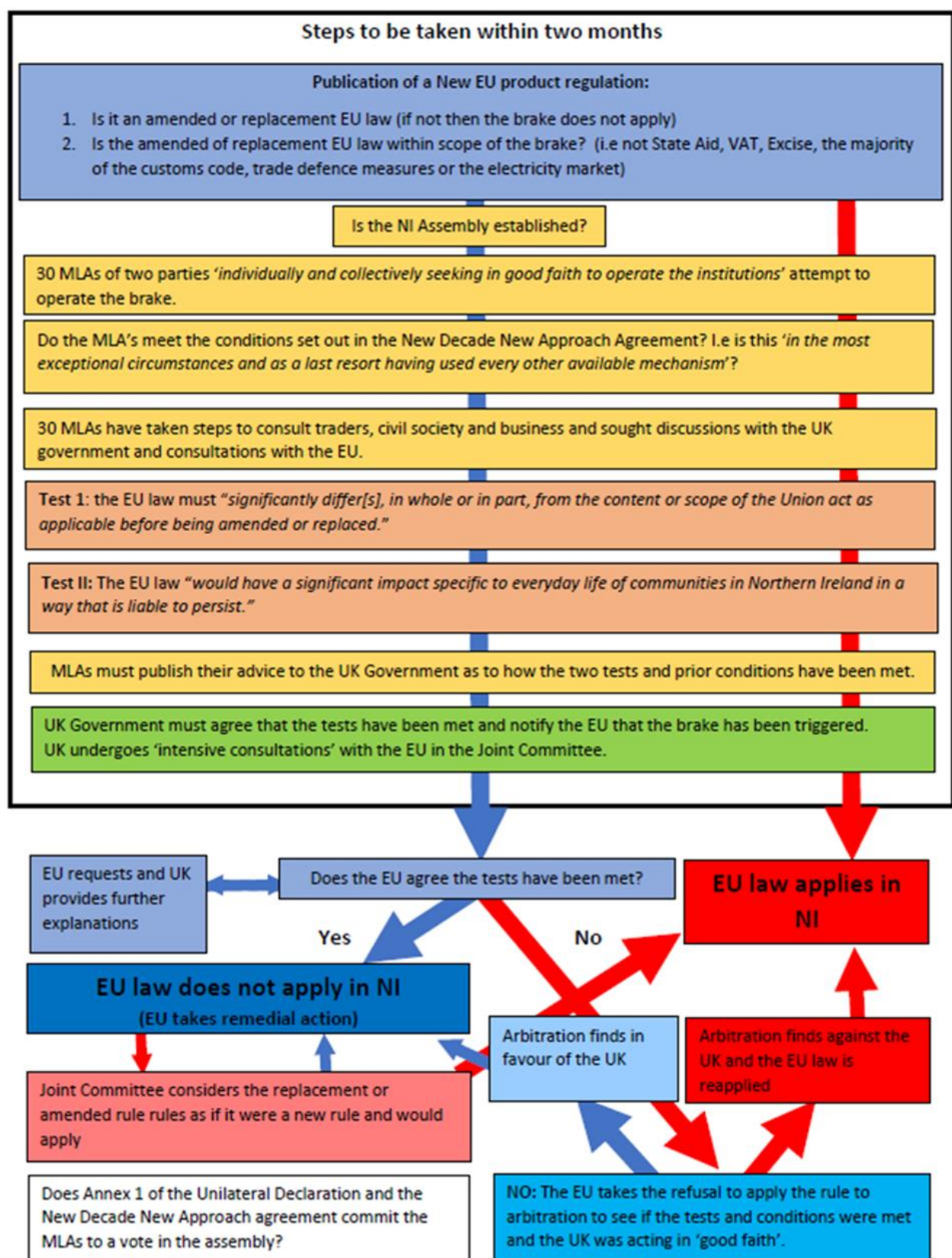
“a new regulatory border” means regulatory requirements relating to the movement of goods that would (a) materially divert trade, or (b) materially impair the free flow of goods.

⁵ See CP 806 Para 52, Page 19.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1138989/The_Windsor_Framework_a_new_way_forward.pdf

And UKIMA s. 46 <https://www.legislation.gov.uk/ukpga/2020/27/section/46>

The Stormont Brake in Practice



Problems with the Windsor Framework ‘Stormont Brake’

- It is very narrow, not covering many of the important parts of the Protocol – state aid, electricity markets, tax, most of the customs section in Article 5 etc.
- The conditions, consulting, the tests, the time frame (as set out above) make it very difficult to use.
- If it is used then the result can be reversed by independent arbitration making a binding recommendation.

The new SI Brake on ‘new EU laws’

- The SI in part 4 creates the new procedure to give Stormont a say in new EU laws. However, this is likely to make it more difficult for the UK to use its ‘veto with consequences’ as the new bodies will include parties that may oppose the use of the Brake and will now be able to provide reasons as to why its not ‘exceptional’ and why the Government should block its use.

Article 16 – the safeguards article is its own ‘brake’?

- While the new Windsor Framework ‘Stormont Brake’ has a test of a “significant impact”, article 16 already contains a UK right to override an EU law in certain other circumstances. This right is not limited to certain laws and does not require a specific procedure. It is unclear whether the new Article 13 (3) adds anything to the existing Article 16 rights or potentially detracts from them.

Article 16 Safeguards

1. If the application of this Protocol leads to **serious economic, societal or environmental difficulties that are liable to persist, or to diversion of trade, the Union or the United Kingdom may unilaterally take appropriate safeguard measures.** Such safeguard measures shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation. Priority shall be given to such measures as will least disturb the functioning of this Protocol.

2. If a safeguard measure taken by the Union or the United Kingdom, as the case may be, in accordance with paragraph 1 creates an imbalance between the rights and obligations under this Protocol, the Union or the United Kingdom, as the case may be, may take such proportionate rebalancing measures as are strictly necessary to remedy the imbalance. Priority shall be given to such measures as will least disturb the functioning of this Protocol.

3. Safeguard and rebalancing measures taken in accordance with paragraphs 1 and 2 shall be governed by the procedures set out in Annex 7 to this Protocol.

Conclusion:

- It is not accurate to call the Windsor Framework ‘Stormont Brake’ a veto.
- The tests are not set by the UK and meeting them will be subject to arbitration and good faith provisions.