The Windsor Framework: a new beginning for trade with Northern Ireland

International Tax | Indirect Tax



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The new Windsor Framework redefines the trading arrangements between Great Britain and Northern Ireland. We review the most significant changes to the Northern Ireland Protocol.

Key Points

What's the issue?

The new Windsor Framework will hopefully usher in an era of better trading and legal arrangements between Great Britain and Northern Ireland in a way that the EU can live with.

What does it mean to me?

This feels like an outbreak of common sense after a fractious period of relations between the UK and the EU and burdensome trading and tax rules.

What can I take away?

Although trading (and hence tax) arrangements are never straightforward, this has been one of the thorniest areas of Brexit for both the UK and the EU to solve. It deals with the everyday issues that people and businesses in Northern Ireland have faced as a result of the operation of the Northern Ireland Protocol.

As is well known, the whole point of the Northern Ireland Protocol was to prevent a hard border on the Island of Ireland, separating the UK from the EU as a result of Brexit. It is currently the only land border that the UK has with the EU and it has been estimated that there are around 300 road crossings along the border of about 300 miles.

The Protocol provided a complex, almost bipolar existence for Northern Ireland. In one breath, it is a part of the UK; and as if by magic, in the next breath it is to all intents a mini-EU member state with Northern Ireland being kept in the EU VAT single market for goods. Northern Ireland is, however, part of the UK customs territory, whilst enforcing the EU customs code.

The most obvious practical expression of the Protocol was that the UK/EU border effectively moved into the Irish Sea. All goods arriving into Northern Ireland would need to be checked to see if the goods were ‘at risk’ of fleeing across the border into the EU without proper EU checks and duties paid.

The economic and political costs that resulted from this and the collapse of formal government at Stormont are well-known and will not be repeated here, but suffice to say that with its 2022 Protocol Bill the UK government added fuel to the fire, as perceived by the EU. Under the Protocol Bill, the government said that the international law ‘doctrine of necessity’ provided a clear, temporary basis to justify the non-performance of international obligations (under Brexit) in certain exceptional circumstances.

Mercifully, with new leadership at Westminster, a less inflammatory approach towards the EU has been adopted. The Windsor Framework is the result and the Protocol Bill has been scrapped.

The agreement still needs formal approval on both sides and there are political difficulties to overcome, but it is expected to come into law in the autumn of 2023. The current arrangements will apply until then.

What is the Windsor Framework?

The Windsor Framework is an international arrangement between the UK and the EU under which the parties commit to binding international law obligations, including changes to the Protocol itself. The UK and EU have made clear in the Political Declaration accompanying the Windsor Framework that the amended Protocol is governed by the Vienna Convention on the Law of Treaties.

The Windsor Framework addresses the government's position as set out in the July 2021 Command Paper. It respects the Act of Union and the Belfast (Good Friday) Agreement, and deals with the everyday issues that people and businesses in Northern Ireland had faced as a result of the operation of the Protocol.

The main changes to the Protocol

The most significant changes to the Protocol made by the Windsor Framework include the following:

New system of checks on goods: There will be a new system of checks on goods moving from Great Britain (i.e. Scotland, England and Wales) to Northern Ireland. Goods destined to stay in Northern Ireland will go through a 'green lane'. Green lane goods will have fewer checks and controls, including no customs checks or checks on the rules of origin for customs duties purposes. In contrast, 'red lane' goods (destined for the Republic of Ireland or the rest of the EU) will be subject to full checks and controls to protect the EU's single market and the EU's customs union rules (including food safety).

Products of animal origin: Products of animal origin, such as meat and dairy, will have checks and controls reduced. Food retailers, including supermarkets, wholesalers and caterers, will be able to move agri-food via the green lane and

physical checks and tests will be scrapped. (The Movement Assistance Scheme currently helps businesses to meet requirements for moving animals, plants and associated products from Great Britain to Northern Ireland. This includes advice to businesses through a dedicated helpline and pays for health certification costs.)

Data sharing and labelling arrangements: New arrangements would be used to oversee the new system.

Export declarations: Businesses moving goods between Northern Ireland and Great Britain will not be required to complete export declarations in either direction. (The UK has already taken this step unilaterally.)

Chilled meats: The prohibition on certain chilled meats such as sausages from Great Britain being sold in Northern Ireland will be removed. (The UK has already taken this step unilaterally.)

Parcels: Individuals and online businesses (such as eBay and Amazon) sending parcels to Northern Ireland will not require customs paperwork. (The UK has already taken this step unilaterally.)

State aid rules: The circumstances under which the EU can bring action against the UK for subsidies in Northern Ireland that go against EU state aid rules have been tightened.

Tariff reimbursement scheme: The framework includes a ‘new, comprehensive tariff reimbursement scheme’ that will be established for businesses that have moved goods into Northern Ireland but were not sure of the end-destination for their goods at the time and thus paid EU duties and VAT.

Medicines: There will be a dual regulatory system for medicines in Northern Ireland.

Second-hand cars: Northern Ireland’s second-hand car market is protected into the future with a new scheme to take effect from 1 May 2023, ending two years of uncertainty for traders and consumers.

VAT and excise rules: Under the Protocol, EU VAT and excise rules applied to goods traded in Northern Ireland, preventing the UK government from introducing UK-wide VAT reforms in the region. The Windsor Framework restores UK VAT and

excise rules in Northern Ireland.

Reduced and zero rate VAT: On VAT, the limit on the number of reduced and zero rates in Northern Ireland will be removed, ensuring parity with the rest of the UK. This means, for example, that the zero rating for installing energy saving materials such as heat pumps and solar panels in Great Britain will also apply in Northern Ireland. It delivers full flexibility on rates in the future by establishing new categories that can be applied for VAT purposes where goods are consumed in Northern Ireland.

What is the Stormont Brake?

The UK was unhappy that the original Brexit deal allowed the European Court of Justice to oversee how the protocol was applied, as it didn't want EU regulations to supersede UK laws. The Windsor Framework includes a new mechanism called the 'Stormont Brake' for Northern Ireland to challenge amendments to existing EU law, while keeping the European Court of Justice as the sole arbiter of EU regulations. The UK and EU have committed to resolving all future disputes relating to the operation of the Protocol through engagement in the EU-UK Joint Committee, before reverting to the dispute settlement procedures established by the Withdrawal Agreement.

Comment

Overall, these changes to the text of the original Protocol look to be positive. They guarantee Northern Ireland's position within the UK's VAT and excise area, while still maintaining frictionless trade for those businesses trading with the EU. Northern Ireland businesses will be able to benefit from new UK changes (for example in VAT).

The UK government will legislate for this unfettered NI-GB trade through the Internal Market Act, which will be reinstated after being dropped in 2020 and is expected to be law by the autumn of 2023.

As ever with Northern Ireland, nothing is straightforward and there remain political obstacles to overcome. However, the Windsor Framework looks to be a sensible pragmatic way forward that will hopefully satisfy all relevant parties.

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