



Windsor Framework Democratic Scrutiny Committee

Inquiry into Regulation (EU) 2024/1157 of the European Parliament and of the Council of 11 April 2014 on shipments of waste, amending Regulations (EU) No 1257/2013 and (EU) 2020/1056 and repealing Regulation (EC) No 1013/2006

Ordered by the **Windsor Framework Democratic Scrutiny Committee**

to be published 6 June 2024

Report: NIA 27/22-27 Windsor Framework Democratic Scrutiny Committee

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Purpose and Membership

Purpose

The Windsor Framework Democratic Scrutiny Committee is a standing committee of the Northern Ireland Assembly established under [Schedule 6B to the Northern Ireland Act 1998](#).

The purpose of the Committee is to assist with the observation and implementation of [Article 13\(3a\)](#) and [Article 13\(4\)](#) of the Windsor Framework.

The functions of the Committee include:

- a. the examination and consideration of new EU acts and replacement EU acts;
- b. the conduct of inquiries and publication of reports in relation to replacement EU acts;
- c. engagement with businesses, civil society and others as appropriate in relation to replacement EU acts;
- d. engagement with the UK Government in relation to replacement EU acts;
- e. engagement with Ministers and Northern Ireland departments in relation to replacement EU acts;
- f. the collation and publication of evidence collected as part of its other activities; and
- g. dealing with other matters (including legislative proposals which may become new EU acts or replacement EU acts) which the Committee considers to be connected with its purpose or other functions.

A replacement EU act means an EU law which updates, by amending or replacing, any of the relevant¹ EU laws which already apply in Northern Ireland, as listed under Annex 2 of the Windsor Framework. Areas of EU law that apply in Northern Ireland include legislation on goods, animal and plant health rules, rules on agricultural production, VAT and excise on goods, and state aid rules. The EU's Customs Code also applies to goods entering Northern Ireland. There is a procedure by which members of the Assembly may seek to prevent the application of a replacement EU act (an emergency brake mechanism known as the Stormont Brake). Further information on the Stormont Brake can be found [here](#).

A new EU act means a new EU law which falls within the scope of the Windsor Framework, but which neither amends nor replaces an EU act listed in the Annexes. The Northern Ireland Assembly has a role, by means of an “applicability motion”, in setting out its position on whether a new EU act should be added to the list of EU laws applicable in Northern Ireland. Further information on Applicability Motions can be found [here](#).

¹ Relevant EU laws those EU instruments referred to in the third subparagraph of Article 5(1) of the Windsor Framework, the first indent of heading 1 of Annex 2 to the Framework or headings 7 to 47 of Annex 2 to the Framework

Membership

The Committee has 9 members, including a Chairperson and Deputy Chairperson, and a quorum of five members. The membership of the Committee is as follows:

- Mr Philip McGuigan MLA (Chairperson)²
- Mr David Brooks MLA (Deputy Chairperson)
- Mr Eóin Tennyson MLA³
- Ms Connie Egan MLA⁴
- Ms Joanne Bunting MLA
- Mr Stephen Dunne MLA⁵
- Mr Declan Kearney MLA
- Ms Emma Sheerin MLA
- Dr Steve Aiken OBE MLA

² Mr Philip McGuigan MLA replaced Mr Declan Kearney MLA as Chairperson on the Committee on 9/02/2024

³ Mr Eóin Tennyson MLA replaced Ms Sorchá Eastwood MLA as a member on the Committee on 22/04/2024

⁴ Ms Connie Egan MLA replaced Mr Patrick Brown MLA as a member on the Committee on 20/05/2024

⁵ Mr Stephen Dunne MLA replaced Mr Jonathan Buckley MLA as a member on the Committee on 3/06/2024

Introduction

1. This report sets out the conclusions of an inquiry by the Windsor Framework Democratic Scrutiny Committee ('the Committee') into a published replacement EU act: [Regulation \(EU\) 2024/1157](#) of the European Parliament and of the Council, of 11 April 2024, on shipments of waste, amending Regulations (EU) No 1257/2013 and (EU) 2020/1056 and repealing Regulation (EC) No 1013/2006.
2. The Regulation is a replacement EU act because it amends Regulations (EU) No 1257/2013 and (EU) 2020/1056 and repeals Regulation (EC) No 1013/2006, as listed in the Windsor Framework at Article 5(4), Annex 2, point 25.
3. The replacement EU act applies in Northern Ireland under Article 13(3) of the Windsor Framework but is subject to the mechanism set out in Article 13(3a) of the Windsor Framework. This mechanism provides for a replacement EU act, or relevant parts of a replacement EU act, not to apply in Northern Ireland if the United Kingdom Government ('UK Government') notifies the EU within two months of the act's publication in the EU Official Journal.
4. The UK Government may only make this notification if it is satisfied that the conditions in Article 13(3a) of the Windsor Framework have been met and that the procedures set out in its [Unilateral Declaration on the involvement of the institutions of the 1998 Agreement have been followed](#). These procedures provide, amongst other things, that 30 MLAs from at least two parties (and excluding the Speaker and Deputy Speakers) will need to notify the UK Government of their wish that the emergency brake mechanism should be applied.⁶
5. If the UK Government is satisfied that the necessary conditions have been met, it will notify the EU in the Joint Committee. The EU law will not apply in Northern Ireland in its new form two weeks later. The older version of the EU law will still apply. The relevant law would then be discussed in the EU-UK Joint Committee

⁶ The emergency brake mechanism applies to EU acts referred to in the first indent of heading 1 and in headings 7 to 47 of Annex 2 to the Windsor Framework and to Article 2(1)(c) of Council Regulation (EC) 1186/2009 setting up a Community system of reliefs from customs duty.

under the process for new EU laws - Article 13(4). The UK Government must not agree (apart from in exceptional circumstances) to adopt the new law unless the Assembly has passed a motion with cross-community support, known as an applicability motion.

6. The replacement EU act in question - Regulation (EU) 2024/1157 - was published in the EU Official Journal on 30 April 2024. The UK Government formally notified the Committee of the act's publication on 2 May 2024.
7. Under paragraph 8(1) of Schedule 6B to the Northern Ireland Act 1998, the Committee must decide no later than five working days after the day on which it was notified of the replacement Regulation whether it wishes to hold an inquiry. In reaching a decision, paragraph 8(2) of Schedule 6B requires the Committee to have regard to whether it appears likely that the replacement EU act:
 - significantly differs (in whole or in part) from the content or scope of the EU instrument which it amends or replaces; and
 - would have a significant impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist.
8. The Committee may also have regard to any other matters it considers appropriate.

The Replacement EU Act

9. The replacement EU act repeals and replaces the EU's Waste Shipments Regulation⁷ (WSR) which implements commitments made by the EU under two legally binding international instruments: the [1989 Basel Convention on the control of transboundary movements of hazardous wastes and their disposal](#) and a subsequent [OECD Decision on the control of transboundary movements of wastes for recovery](#). The United Kingdom ('UK') participates in both instruments. The Regulation also amends a provision of an EU Regulation on ship recycling.⁸ These earlier Regulations both apply in Northern Ireland under the Windsor Framework.
10. International waste shipments, including in relation to the EU control framework for shipments of waste, is a reserved policy area. However, the Northern Ireland Environment Agency, as the regulator, is the named competent authority for implementation and regulation of the waste shipments regime.
11. The European Commission's objectives in proposing the replacement Regulation were to improve the protection of the environment and human health by strengthening the rules that apply to shipments of waste within, to and from the EU. The Regulation tightens controls on waste shipments within the EU by improving notification and consent procedures and providing for the exchange of information through a centralised digital hub operated by the European Commission.
12. The Regulation aims to strengthen scrutiny of waste management practices in destination countries outside the EU, including an obligation for EU companies exporting waste to ensure waste treatment facilities in the destination country are independently audited. It also gives a new power to the European Commission to carry out investigations into illegal waste shipments and interview those involved.

⁷ [Regulation \(EC\) No 1013/2006 on shipments of waste](#) (consolidated text).

⁸ [Regulation \(EU\) No 1257/2013 on ship recycling](#).

The Committee's Decision on Whether to Hold an Inquiry

13. The Committee met on 9 May 2024 to decide whether or not to hold an inquiry into Regulation (EU) 2024/1157.
14. To assist it in reaching a decision, the Committee considered legal advice on whether it appeared likely that the replacement EU act differed significantly (in whole or in part) from the content or scope of the old Regulations which it seeks to amend or replace. The Committee noted that the legal advice indicated that the published replacement act significantly differs, in part, from the content or scope of the EU instrument which it amends or replaces.
15. The Committee also considered whether it appeared likely that the replacement EU act would have a significant impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist. It did this by: examining an initial assessment of impact provided by the Department of Agriculture, Environment and Rural Affairs (DAERA); listening to evidence from DAERA officials; considering the UK Government's Explanatory Memorandum (EM) dated 14 December 2021, which was produced when the act was at proposal stage; and, considering relevant correspondence published by the House of Lords European Affairs Sub-Committee on the Windsor Framework and reports published by House of Commons European Scrutiny Committee.
16. The assessment of impact, the EM and the correspondence published by the Westminster scrutiny committees, can be found at **Appendix B**. The Official Report ('Hansard') of the evidence session can be found at **Appendix C**.
17. Having had regard to whether it appears likely that Regulation (EU) 2024/1157:
 - significantly differs (in whole or in part) from the content or scope of the EU instrument which it amends or replaces; and
 - would have a significant impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist,

the Committee decided to hold an inquiry into that act. This [decision](#) was published on the Committee's webpage.

18. Having made its decision to hold an inquiry into the replacement EU act, the Committee wrote to the Rt Hon Steve Baker MP, Minister of State, highlighting that the full impact of the replacement EU act, should it apply in Northern Ireland, will not be known for some time. A copy of the letter dated 10 May 2024, can be found at **Appendix B**.

The Inquiry Process

19. In conducting an inquiry, paragraph 9(2) of Schedule 6B to the Northern Ireland Act 1998, requires the Committee to “seek substantive discussion and engagement” with the UK Government, the relevant Northern Ireland Minister or department, and, to the extent that the Committee considers appropriate, representatives of businesses and civil society affected by the replacement EU act, or who would be affected, if the act was to apply in Northern Ireland. The Committee may also consider any matters it deems appropriate.
20. The Committee had to conclude its inquiry and publish a report setting out its conclusions no later than 15 working days before the end of the two-month scrutiny period. The scrutiny period started when the replacement Regulation was published in the EU Official Journal on 30 April 2024, and therefore ends on 30 June 2024.
21. The Committee considered matters relating to its inquiry, including making a decision on whether to conduct an inquiry, at five meetings. The Minutes of Proceedings can be found at **Appendix A**.
22. At its meeting on 9 May 2024, the Committee agreed to seek substantive discussion and engagement with the UK Government. It therefore wrote to the UK Government to seek its views on whether applying, or not applying, the replacement EU act would have an impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist. In considering the matter of divergence, details of the position in England, Scotland and Wales was also requested. A copy of the Committee’s correspondence dated 9 May 2024, can be found at **Appendix B**. At the time of deliberations on the evidence received, the UK Government had not responded to the Committee, nor had it provided an updated EM for the replacement EU act⁹.
23. At this meeting, the Committee also agreed to seek substantive discussion and engagement with the relevant Northern Ireland department which was DAERA. Therefore, it requested that DAERA officials attend the Committee meeting on

⁹ [A response from the UK Government, which includes a briefing note prepared by DEFRA, was received after the Committee had completed its deliberations at its meeting on 30 May 2024.](#)

16 May 2024, to give oral evidence. Officials attended as requested and the Hansard of the oral evidence can be found at **Appendix C**.

24. The Committee also agreed to seek substantive discussion and engagement with representatives of business and civil society. It opted to use Citizen Space as a platform to facilitate this engagement. A survey asking for views on the impact of the replacement EU act was launched on 10 May 2024.
25. At its meeting on 9 May 2024, the Committee agreed to write directly to key representatives of business and civil society, identified by the Assembly's Research and Information Service, as being affected, or who would be affected, if the replacement EU act was to apply in Northern Ireland, and a selection of local councils and some waste shipment companies, to alert them to the Citizen Space survey. The survey, which was publicised widely, was also open for response by any other representatives of business and civil society as well as members of the public. Two survey responses were received. One respondent agreed that their response could be published, and this can be found at **Appendix D**.
26. The Committee considered the survey responses at its meeting on 23 May 2024. Following consideration, it agreed to write to the UK Department for Environment, Food and Rural Affairs (DEFRA), via the Cabinet Office, to request its comments on the issues raised by respondents. A copy of the Committee's correspondence dated 24 May 2024, can be found at **Appendix B**. At the time of deliberations on the evidence received, DEFRA had not responded to the Committee¹⁰.
27. The Committee deliberated on the evidence received at its meeting on 30 May 2024. The evidence received is not rehearsed in this report; a complete picture of the written and oral evidence can be found in the Appendices.
28. At Its meeting of 6 June 2024, the Committee agreed its Inquiry report and that it should be published.

¹⁰ See Footnote 9.

The Committee's Conclusions

29. In reaching its conclusions, the Committee has carefully considered all the evidence provided to it. The Committee has focused in particular on the two conditions that must be satisfied if the Stormont Brake is to be pulled.
30. In relation to the legal question of whether the replacement EU act significantly differs (in whole or in part) from the content or scope of the EU instrument which it amends or replaces, the Committee noted the legal advice it commissioned which indicated that the replacement EU act significantly differs, in part, from the content or scope of the EU instrument which it amends or replaces.
31. The Committee recognised that the replacement EU act contains significant new provisions, which go beyond what was contained in the original EU instruments, including a new power for the European Commission to carry out investigations into illegal waste shipments and interview those involved.
32. **Having considered its commissioned legal advice, the Committee concluded that the replacement EU act significantly differs, in part, from the content or scope of the EU instrument which it amends or replaces.**
33. In relation to the question of whether the replacement EU act would have a significant impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist, the Committee considered the written and oral evidence it received from DAERA officials, and the responses to its Citizen Space survey.
34. In considering this evidence, the Committee took the view that for an act to have a significant impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist, that significant impact must be negative.
35. **Having considered the evidence received from the Department of Agriculture, Environment and Rural Affairs, and respondents to its Citizen Space survey, the Committee concluded that it was unable to reach a view on whether the replacement EU act would have a significant impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist.**

Next Steps

36. Having reached its conclusions, the Committee's Inquiry report will be issued to all Members of the Legislative Assembly for further consideration.

Links to Appendices

Appendix A: Minutes of Proceedings

View Minutes of Proceedings from evidence sessions related to the report

[Minutes of Proceedings - 9 May 2024](#)

[Minutes of Proceedings - 16 May 2024](#)

[Minutes of Proceedings - 23 May 2024](#)

[Minutes of Proceedings - 30 May 2024](#)

[Minutes of Proceedings – 6 June 2024](#) [available from 13 June 2024]

Appendix B: Memoranda and Other Papers

View Memoranda and Other Papers considered by the Committee

[Department of Agriculture, Environment and Rural Affairs Initial Assessment of Impact](#)

[UK Government Explanatory Memorandum – 14 December 2021](#)

[Extracts from the Eighteenth and Twenty-first Reports of Session 2021–22 and correspondence published by the House of Commons European Scrutiny Committee](#)

[Correspondence published by the House of Lords European Affairs Sub-Committee on the Windsor Framework](#)

[Correspondence from the Chairperson to the UK Government Minister of State – 9 May 2024](#)

[Correspondence from the Chairperson to the UK Government Minister of State – 10 May 2024](#)

[Correspondence from the Clerk to the Department for Environment, Food and Rural Affairs \(via Cabinet Office\) – 23 May 2024](#)

[Response from the Department for Agriculture, Environment and Rural Affairs to issues raised during oral evidence on 16 May 2024 – 28 May 2024](#)

Appendix C: Minutes of Evidence

View Minutes of Evidence of Committee meetings related to the report:

[Minutes of Evidence – 9 May 2024](#)

[Minutes of Evidence – 16 May 2024](#)

Appendix D: Consultation Responses

View responses to the Committee's consultation

[Consultation responses](#)

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