Notification under Part 3 of Schedule 6B of the Northern Ireland Act 1998 ("Stormont Brake")

Replacement EU Act: ***Regulation (EU) 2026/2108 establishing the Union Customs Code and the European Union Customs Authority, and repealing Regulation (EU) No 952/2013***

4 November 2026

Lead Member: **Jonathan Buckley MLA**

Criteria: *''The content or scope of the Union act as amended or replaced by the specific Union act significantly differs, in whole or in part, from the content or scope of the Union act as applicable before being amended or replaced.''*

The Windsor Framework Democratic Scrutiny Committee commissioned legal advice on Regulation (EU) 2026/2108, which indicated that:

- the EU act significantly differs in part from the content and scope of the Regulation it replaces.
- the new provisions will widen the content and scope of Union Customs Code significantly.
- the amended customs regime is considerably more detailed than the current provision.

In particular, the Regulation is distinct from *Regulation (EU) No 952/2013* in a number of substantive and material respects, including:

- the introduction of 'Trust and Check' trader status;
- the introduction of a single centralised IT environment known EU Customs Data Hub;
- the expansion of the regime in customs supervisions, customs controls and risk management;
- the different customs procedures that allow a trader to temporarily store the goods, or to release them for free circulation on the EU Single Market;
- a new simplified processes for bringing goods into, taking goods out of, the Customs Union;
- new rules in respect of tariff classification, origin and value of goods;
- new detailed rules on customs debt on import and export;
- new restrictive measures and crisis management provisions;
- the establishment of the EU Customs Authority;
- new detailed rules on customs cooperation; and
- the introduction of common provisions of customs infringements and on non-criminal sanctions.
- a new category for e-commerce sale of products from outside the EU, known as the 'importer for distance sales'
- a new handling fee per item imported into the EU, payable by the importer for distance sales

These provisions extend beyond merely technical amendments.

Criteria: *''The application in Northern Ireland of the Union act as amended or replaced by the specific Union act, or of the relevant part thereof as the case may be, would have a significant impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist.''*

Having considered the body of evidence and information available, it is our assessment that this replacement EU act would have a significant and sustained impact specific to everyday life in Northern Ireland. This is a conclusion shared by a range of businesses and trade bodies who responded to the Windsor Framework Democratic Scrutiny Committee's call for evidence, including:

- Inter-Trade UK Business Association

- The British International Freight Association
- Gray and Adams (Ireland) Limited
- Montgomery Transport Group
- AJ Power Ltd

Aspects of the Regulation which give rise to a significant, negative and persisting impact on the life of communities in Northern Ireland include:

Reaffirmation of the existing customs border between Great Britain and Northern Ireland enacted through EU Regulation 952/2013. This includes the imposition of supplementary declarations, origin and commodity-code requirements, threat of tariffs and other onerous rules for businesses moving goods across the Irish Sea. These requirements, despite facilitations, continue to push up costs, add delay, are prompting GB suppliers to withdraw from the Northern Ireland market and reducing choice for NI firms and consumers compared to their counterparts in Great Britain. Under EU Regulation 952/2014, between 2020 and 2024 both purchases from and sales to ROI have increased at around two and a half times the rate of any NI trade with GB. This diversion and reorientation of trade is not only negatively impacting historic UK supply chains on which prosperity in local communities rely; it is consuming staff, time and resources and disproportionately impacting small and medium sized enterprises. The imposition of newly-expanded Regulation (EU) 2026/2108 will only serve to entrench this harm in our communities and give legal weight to the position of GB as a 'third country.' As on stakeholder started in written evidence: *'it risks compounding the existing harm to Northern Ireland's position within the UK internal market.'*

Further centralisation of customs governance to a new EU Customs Authority in Lille, France. This will have effect of subjecting businesses and consumers in Northern Ireland, and trade to Northern Ireland not eligible for facilitations, to the whims of a foreign body, with no democratic representation. This is heightened by the fact that much of the legal, operational and technical design for the expanded EU customs regime remains to be determined through future Delegated and Implementing Acts. As one business stated in their written evidence:

> *''Further layers of centralised control…will exacerbate the current trading problems and make business even more difficult for those businesses who trade primarily within the UK.''*

Increased complexity for businesses. Industry has made it clear that the increasingly data-intensive compliance requirements at the heart of this Regulation will add a new dimension of complexity to facilitating trade, resulting in extended processing times, additional delays, reduced supplier appetite and extra costs that will ultimately be passed down the supply chain to the consumer. The cumulative impact of this administrative burden will be felt by local households, communities and in future levels of economic growth.

The impact of increased reporting, monitoring and enforcement. The Regulation would place additional requirements on businesses in these areas that necessitate ongoing investment in systems, expertise and operational resources. This will disproportionately impact those firms that are smaller and have reduced operational flexibility. The potential charging of additional penalties for firms moving goods from one part of the UK to another will further erode NI's competitiveness and make our Province less attractive for investment and trade. As another stakeholder noted in written evidence: *'even incremental additions can have a disproportionate effect when layered onto an already complex system.'*

Criteria: *"MLAs have sought prior substantive discussion with the UK Government and within the Northern Ireland Executive to examine all possibilities in relation to the Union act; taken steps to consult businesses, other traders and civic society affected by the relevant Union act; and made all reasonable use of applicable consultation processes provided by the European Union for new Union acts relevant to Northern Ireland."*

The Windsor Framework Democratic Scrutiny Committee identified proposal COM/2023/258 as one likely to be notified as a published act, on 20 February 2025 and subsequently considered the proposal at six meetings. This extensive scrutiny included:

- Requesting, and considering, an assessment from the Department for the Economy, with input from HMRC, to determine whether the proposal was likely to have a significant, enduring impact specific to the everyday lives of communities in Northern Ireland.
- Arranging, and receiving, oral evidence from departmental officials, alongside written and oral legal advice.
- Launching a Citizen Space survey on 29 May 2025 and considering responses from the British International Freight Association, the British Ports Association and the Consumer Council for Northern Ireland in September of the same year.
- Drafting, and sending, follow-up questions to DfE, with a joint DfE/HMRC response subsequently considered on 11 September 2025.
- Writing separately to the UK Government seeking an update on discussions with the European Commission concerning the potential application of the proposal under the Windsor Framework, as well as implementation of the Border Target Operating Model (BTOM) and Single Trade Window (STW).
- Considering the Government's Explanatory Memorandum, dated 3 August 2023, and relevant Committee scrutiny material from both Houses of Parliament.
- Receiving oral evidence from the Office of the Northern Ireland Executive in Brussels (ONIEB).
- Requesting that HMRC officials attend a Committee meeting to discuss the implications of relevant current and proposed EU customs legislation.

In addition to this, following publication of the final EU act in September 2026, Members:

- Considered legal advice and the potential impact of the published Regulation, alongside DfE's impact assessment, departmental oral evidence and the refreshed UK Government's Explanatory Memorandum of 28 September 2026.
- Decided to conduct a formal inquiry.
- Launched a further Citizen Space survey on 1 October 2026, open not only to identified stakeholders but also to other business and civil society representatives and members of the public.
- Considered responses from the Inter-Trade UK Business Association, the Montgomery Transport Group, Gray & Adams (Ireland) Ltd, AJ Power Ltd, two individuals and the Traditional Unionist Voice.
- Wrote to the UK Government seeking its views on the enduring impact of applying or not applying the Regulation in Northern Ireland, including information on the position in England, Scotland and Wales.
- Sought substantive engagement with DfE, requesting oral evidence on 15 October 2026 and further written information to address questions not fully answered.
- Asked HMRC to comment further on responses to the 2025 consultation and to provide information about responses to HMRC's own consultation on the EU act.

- Requested further information on the likely impact of future global trade instability, sanctions and trade disputes on the proportion of distance sales classified as 'not at risk'; the actual volume and types of parcels entering Northern Ireland that would be considered 'at risk'; and arrangements for notifying Northern Ireland public bodies of relevant changes to the UCC.

These actions demonstrate repeated and documented engagement with both the UK Government and the relevant Northern Ireland departments, covering the potential implications of applying or not applying the Regulation.

Criteria: *"The notification is only being made in the most exceptional circumstances and as a last resort, having used every other available mechanism."*

This notification is being made in the most exceptional circumstances and as a last resort follows on from the fact that, as the following sets out in detail, notwithstanding the very serious problems raised by consultees, the Government did not provide credible responses to their presenting concerns and in some cases did not even attempt to do so.

In this context we have been forced to conclude that there is no remedy to the problems raised and that the published union Act will indeed have a significant impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist, and that there is consequently no alternative but to pull the brake.

In what follows we set this out in detail:

i. That Rather than Having a Positive Impact on NI, the New Streamlining and Centralisation Proposed by EU Regulation 2026/2108 (designed to have a positive impact on EU Member States) will Have a New Negative Serious Impact on Northern Ireland that is likely to Persist

In responding the consultation submissions, the UK Government does not deny the current difficulties caused by the Irish Sea Border but implies that, while work will continue to address the presenting challenges such as through the promised 'one stop shop', these difficulties pre-existed EU Regulation 2026/2108 and so they do not provide grounds for opposing it. Indeed, they argue that the new regulations should make things better.

The problem with this response to the consultations, however, is twofold:

First, the consultees were aware of the arguments that rather than making things worse EU Regulation 2026/2108 was specially designed to streamline customs, making it work better.

Second, it was precisely because of the streamlining and data centralisation that the consultees argued that EU 2026/2108 would have a seriously negative impact on life in Northern Ireland that was likely to persist, so simply asserting streamlining and data centralisation as grounds for arguing that EU Regulation 2026/2108 addresses the concerns of the consultees when they are the basis for their concerns provides no answer.

The Inter-Trade UK Business Association says:

'Further EU customs reform risks making these difficulties worse through increasingly centralised, data-intensive and interconnected compliance requirements.'[1]

Redacted says:
'... Consideration should be given to the additional obligations that may arise from increased data reporting, enhanced monitoring requirements and enforcement mechanisms contained within the proposed Regulation.'[2]

Redacted says:
'Further layers of centralised control, especially those relating to the EU (which is an inherently bureaucratic organisation) will exacerbate the current trading problems and make business even more difficult for those businesses who trade primarily within the UK.'[3]

Why Government Engagement Was Particularly Important

In approaching the failure of government to in any way engage with the concerns expressed by businesses in their submissions to the consultation on the published EU Act in relation to streamlining and data centralisation it is important to note that the Department of the Economy's Assessment of Impact of the Published EU Act stated that it could find no evidence of any Northern Ireland engagement with the 2022 EU Commission consultation that preceded the new legislation. Specifically, they state:

'*The Department has not identified evidence that Northern Ireland stakeholders participated directly in the Commission's impact assessment process, nor has it identified Northern Ireland-specific evidence within the published assessment. The Commission's assessment was based on EU-wide consultation and stakeholder engagement.*'[4]

In this context there were three clear reasons why the Government should have listened extra carefully and taken care to engage in detail with Northern Ireland concerns in the Democratic Scrutiny Committee consultation.

First, they knew NI had not engaged in the Commission consultation.

Second, they knew that although EU 2026/2108 is supposed to apply to Northern Ireland, it was developed by a legislature in which Northern Ireland was not represented.

Third, they knew that, while Northern Ireland's voice would need to be heard in the consultation process along with that of every jurisdiction, given that like every jurisdiction, it pertains to a different place and may have distinct concerns on account of that, the need to engage Northern Ireland was already far greater, notwithstanding it being uniquely unrepresented in the legislature making EU Regulation 2026/2108. Specifically, while the legislation was designed to meet the needs of the borders of fully integrated economy jurisdictions between themselves and the outside world, it had not been fashioned out of regard for the entirely different neds of Northern Ireland. Rather than providing a means of regulating the borders between a fully integrated economy, the impact of these regulations on Northern Ireland would be for the purpose of introducing a new stage in cutting a fully integrated economy into two, generating a completely different needs profile for Northern Ireland vis-à-vis all other jurisdictions in the development of the legislation. In this context the Government knew that the need for listening very carefully to the needs of Northern Ireland articulated in this final consultation was huge and yet they dismissed it, completely ignoring some points raised and failing to engage seriously with others.

[1] 20261016-intertrade-ukba.pdf
[2] 20261016-mtgroup.pdf
[3] 20261017-gray-adams.pdf
[4] https://www.niassembly.gov.uk/globalassets/committee-blocks/windsor-framework-democratic-scrutiny-committee/reg-eu-20262108/l.-20260930-dfe-aoi-merged.pdf

In order to properly understand the very different needs of Northern Ireland with respect to the customs border and those of the other jurisdictions, and what this means as we now consider EU Regulation 2026/2108, it is important to be clearer about the completely different economic context that EU Regulation 2026/2108 engages with in relation to represented EU Member states, on the one hand, and unrepresented UK/Northern Ireland, on the other. To this end, we must first, compare and contrast economic flows within and between fully integrated economies and then to ask what it is like for a company that has been relating to other companies within an integrated economy, if the dividing line of a customs border begins to fall between them.

a. Domestic Trade Compared with International Trade

International Trade involves lorries containing typically a couple of products in bulk to minimise the need for generating different customs and SPS forms. If there were only two products carried in bulk in one lorry, the driver will only need two customs forms and possibly two SPS forms (depending on the nature of the product) to cross the border. The cost of generating these forms in time and money expressed as a proportion of the value of the load, is small and therefore manageable.

By contrast domestic movements within fully integrated economies are quite different. To appreciate why we must travel on with the lorries involved international trade after they have crossed the border and journey with them to their next port of call, a regional distribution hub. There the goods are loaded onto lorries engaged in domestic goods movements which rather than being limited to a couple of products in bulk, carry diverse loads of many different products (up to 300) direct to retailers. If those lorries encountered a customs border and had to generate up to 300 customs forms this approach would become uneconomic. The cost of generating this paperwork, expressed as a proportion of the value of the goods in the lorry, would be prohibitive.

The absence of trade borders and checks that is definitive of the Internal Market of a fully integrated economy testifies to the fact that those within the internal market have heightened, common obligations to each other, expressed by means of common subjection to domestic tax, domestic law and readiness to serve in times of war. Submitting to those common obligations, creates membership of an Internal Market which generates a qualitatively distinct economic context which sustains a higher level of flexibility, responsiveness and greater economic potential in relation to its territorial extent than is possible when operating between economies divided by trade borders that testify to an absence of the common sense of membership and obligation that is constitutive of a fully integrated economy. This fosters foundational company supply chains that are more secure and dependable than those that cross borders.

b. The Impact of Having a Domestic Trading Relationship Made International

At any one time most companies are conceived and designed to operate within the context of the greater flexibility that is definitive of a fully integrated economy, sustained by membership of a common Internal Market. As the Department for Business and Trade publication on UK exporting businesses (published 31 July 2025) demonstrates, only around 11 to 12% of UK businesses export. Put the other way, a full 88% of businesses just sell within the domestic economy. However, from 1 January 2021 GB businesses trading within the UK with respect to NI (regardless of whether operating from 2024-5, on the basis of the standard Windsor Framework Border arrangements or the additional option of the alternative Windsor Framework border arrangements provided by EU Regulation 2023/118) found that the trade they had previously conducted with part of their home economy, Northern Ireland, on exactly the same basis as trading with Wales, England or Scotland, had been reconfigured into international trade. Most of these companies will have been within the 88% and not conceived of designed for the purpose of international trade and yet they found and are finding themselves asked to become involved in international trade if they wish to continue trading with part of their own country.

Managing the Difference

Having come to terms with the radically different nature and needs of economic life within and between economies, it is possible to understand why innovations in the form of further streamlining and data centralisation for non-diverse international goods movements, made by EU 2026/2108, will pose a real worry and threat if applied to the far more diverse domestic movements that characterise the flows within the UK between GB and NI. EU 2026/2108 has not been conceived for the purpose of streamlining and centralising the application of customs within a fully integrated economy, be that the UK or anywhere else, but for the purpose of streamlining and centralising the application of customs between the fully integrated economies of the EU and the outside world. In all of this the threat posed by companies designed for trading in what was until recently a domestic market, arising from further changes (further that is to the imposition on EU Regulations 2013/952 in 2021) made to help companies engaged in international trade, is obvious and set out clearly by AJ Power in the following:

'Across numerous SME businesses, it is evident that a substantial number of supplementary declarations, potentially running into hundreds of thousands, remain outstanding. ***In many instances, this situation has arisen due to a lack of customs expertise, resources, and specialist knowledge within businesses. It should be recognised that approximately 90% ((71,000) of businesses in Northern Ireland employ fewer than 10 people.(source NISRA) While the objective may be to establish a simpler, more data driven Customs framework and reduce administrative burdens for compliant traders, it is very questionable whether this can realistically be achieved under the current circumstances and especially for small SME's.***

Greater transparency could be provided if HMRC were to publish the number of outstanding supplementary declarations, information which it undoubted holds. If businesses are already struggling and I believe they are, to comply with the current HMRC administered system, it raises legitimate concerns as to whether they will be able to adapt to any future system administered from Europe while remaining commercially viable.'[5] (Emphasis added)

Given the fact that while the streamlining associated with the Windsor Framework may have made negotiating the Irish Sea border easier for larger businesses, the liability it introduced if goods inadvertently enter the Republic has undoubtedly informed the decision of 34% of GB small businesses that previously traded with NI to stop, we have to be concerned that the new customs streamlining of EU Regulation 2026/2108 (which unlike the Windsor Framework was not even designed with Northern Ireland in mind) will further drive GB small businesses away from supplying NI.[6] In this context one has to assume that customs streamlining designed to benefit larger firm specialising in international trade are likely to further drive out smaller GB businesses whose trading relation with NI has always been that of a small business in one part of a country trading with another small business in another part of the country, rather than that of an exporter.

Despite the fact that the Government knew:

a. That there was no read across from the stated rationale of EU Regulation 2026/2108 for Member States to NI,
b. That the businesses were not simply expressing concerns about the Irish Sea Customs as experienced under EU Regulation 2013/952 but were stating that EU Regulation 2026/2108 would be worse in its impact for Northern Ireland because the implications of streamlining and the centralisation of data sharing managing economic flows between economies and within economies,

[5] 20261017-aj-power.pdf

[6] FSB, 'Windsor Framework starting to fracture the UK Internal Market' https://www.fsb.org.uk/media-centre/press-release/windsor-framework-starting-to-fracture-the-uk-internal-market-fsb-urges-urgent-a-MCBRFD3F63FVDWDD2UTB6V2FNW5M

They have inexcusably failed to take the submissions seriously, providing no basis upon which MLAs can dismiss the concerns of the consultees.

ii. That Instead of the New EU Customs Authority Provided for by EU Regulation 2026/2108 having a Positive Impact, it will Have a New Negative Serious Impact that is Likely to Persist

The consultees have expressed serious concerns about the new EU Customs Authority in terms of the governance of customs going forward. Rather than engaging seriously with these points the Government has sought to bat them away with a wholly disingenuous response:

The Government argues that the day to day operations of customs will remain with member states and that the role of the Customs Authority will be unobtrusive.

The HMRC Explanatory Memorandum states at para 21:

'The Authority's role however is primarily one of governance, coordination and support. The text does not provide for the Authority to assume the operational customs functions currently exercised by national customs authorities, including those relevant to the implementation of customs arrangements applicable in NI."[7]

Meanwhile, the Cabinet Office letter of October 21st states:

'I can offer reassurance that the reforms will not diminish the facilitations secured under the Windsor Framework. As set out in the Government's Explanatory Memorandum, the Regulation expressly preserves the level of facilitations provided for in Joint Committee Decision No 1/2023. These arrangements protect Northern Ireland's place in the UK internal market while supporting its privileged dual market access to the EU. "[8]

These responses are irrelevant because no one has suggested that the facilitations under the Windsor Framework will change or that members states won't continue to have to apply the EU's custom arrangements. The concern is that governance will be transferred to the new EU Customs Authority. At the end of the day the most important consideration is not who is implementing the EU's governance decisions, but who is making those governance decisions and it is clear that going forward this will be the European Customs Authority in Lille.

While companies based in member states other than France are likely to find this governance frustratingly remote, it will be nothing compared to the experience of Northern Ireland because whereas Member States are represented in the EU governance structures to which the Customs Authority will be accountable, both through national governments and MEPs, Northern Ireland has no such representation. Moreover, the sense in which EU Regulation 2026/2108 creates greater distance between the governance decisions pertaining to Northern Ireland and the United Kingdom, investing them in an agency for a foreign government that is not accountable to the people of Northern Ireland or to their representatives, or to the people of Great Britain or their representatives, means that the new legislation necessarily imposes a greater alienation between the people of Northern Ireland and our governance, in a way that is permanent further damaging us and our democratic political traditions in a way that is liable to persist.

iii. That the Much Higher Fines to be Imposed by EU Regulation 2026/2108 will have a New and Serious Negative Impact that is Liable to Persist

[7] https://www.niassembly.gov.uk/globalassets/committee-blocks/windsor-framework-democratic-scrutiny-committee/reg-eu-20262108/j-ukg-em.pdf

[8] https://www.niassembly.gov.uk/globalassets/committee-blocks/windsor-framework-democratic-scrutiny-committee/reg-eu-20262108/20261021-ukg-response-merged_redacted.pdf

As AJ Power notes: *'The introduction the new regulations appear to increase the influence and primacy of EU requirements, while also creating the potential for substantially higher penalties in cases of non compliance. We are also concerned that these measures may result in additional bureaucracy and administrative complexity, to the detriment of business based in Northern Ireland.'*[9]

The proposed dramatic increase in penalties under EU 2026/2108 clearly means that the legislation will be more costly for NI companies creating a negative change that will persist and not be experienced by the rest of our country and home economy.

Moreover, this involves our being subject to a radical increase in fines where the wrong-doing in question is defined by a foreign parliament, under the government agency of a foreign government, the EU Customs Authority, and includes trading within our own country. This means that that the new serious, negative impact arising from EU Regulation 2026/2108 arises not merely from the substantial increase in fines, and the differential between ourselves and the rest of the UK in this regard. It also arises from the fact that these large fines have the potential to fall in relation to trading between one part of the UK and another that has been made subject to a customs border whose governance is ultimately controlled by the EU Customs Authority in France.

Furthermore, it is important to note that even if the UK was to negotiate a deal whereby the fines could not pertain to the operation of the Windsor Framework facilitations, that would not address the difficult because those facilitations do not apply to the movement of all goods from GB to NI. The UK Internal Market for Goods does not apply to the movement of any Category 1 goods or to companies (with some exceptions) with a turnover of more than £2 million.

Of real concern this is a point that the UK Government did not even bother to respond to.

iv. That the Much Greater Focus on 'Third Countries' in EU Regulation 2026/2108 means it will have a New Serious Negative Impact that is Liable to Persist.

The EU Customs Code has always designated England, Wales and Scotland to be a third country, that is a foreign country, in relation to Northern Ireland. However, the intensity of this othering strategy through EU Regulation 2026/2108 is greatly compounded by the way it labours the point. Whereas EU Regulation 2013/952 mention 'third country' once. EU Regulation labours this offensive and demeaning term to a far greater, and more institutionalised, extent. Instead of just using the term once, EU Regulation 2026/2108 contains 33 references to the term 'third country', 40 references to the term 'third countries' and one to 'third territories'. This is an insult to UK businesses based in Northern Ireland that pay their taxes like everyone else and expect to be treated with the same respect as companies based in the rest of the country. Although this point was made very clearly and plainly demonstrates how the new Regulations directly violate unionist identity and the parity of esteem principle in the Belfast/Good Friday Agreement in a way and to a degree that makes the legislation toxic, the Government did not even bother to acknowledge this point, let along respond to it.

v. Article 16 – Trade Diversion

The submissions also raised concerns about Article 16 of the Windsor Framework and Trade Diversion which the Government response completely ignored.

The Government has often suggested that it is committed to the Windsor Framework.

It is, however, impossible to respect the Windsor Framework at the same time as ignoring the Safeguard provisions that were built into its design.

[9] 20261017-aj-power.pdf

The Safeguards in Article 16 make it clear that both parties recognised that there were risks associated with the Windsor Framework. This is not surprising because it involved doing something that had never been done before, dividing a fully integrated domestic market with a customs and international SPS border. The inclusion of Article 16 means that if one or more of the safeguards are ever violated the Windsor Framework will start operating outside the parameters within which it has been designed to operate safely.

On the basis of the latest NISRA trade data, which as AJ Power noted should be provided in a more timely and up to date manner given the importance of the safeguards in Article 16, we have to work on the basis that trade diversion is underway. This is obvious for the following reasons:

First, if something is made the subject of a 'safeguard' the only responsible way to handle it is on a precautionary basis, treating data that suggests that trade diversion is happening, with appropriate respect. As AJ Power notes, *'The latest published trade data suggests that Trade diversion is happening with a decline in movements from GB to NI of 6.7% against an overall trend of growth.'*[10]

Second, it is inconceivable that given developments since 1 January 2025 that trade diversion has not further deteriorated as a result of the introduction of the Irish Sea parcels border in May 2025, the introduction of the plant health label border in June 2025, the removal of the Movement Assistance Scheme in July 2025, dramatically increased Not for EU labelling requirements from 1 July 2025 and the imposition of the vet meds border on 1 January 2026 that trade diversion is not now significantly greater than at the end of 2024.

Interestingly, unlike Schedule 6B, trade diversion is deemed by Article 16 to be sufficiently serious that no requirement is made that it is serious and liable to persist, although it is clear that it is serious and liable to persist.

In a context where for the reasons set out above, EU 2026/2108 in applying streamlining and data centralising designed for radically less diverse international trade movements to the infinitely more diverse domestic market movements between one part of the UK and another, is likely to generate more trade diversion and further violation of Article 16, we again have no choice but to pull the brake.

Of real concern given that safeguards should be treated with special care, the UK Government completely ignored the Article 16 points make by consultees.

vi. The Loss of so-called 'Dual Market Access' Will Not Result in the Non-Application of EU Regulation 2026/2108 Having a More Negative Impact than its Application

The Government made it clear in its submissions to the Democratic Scrutiny Committee that it thought that the Non-Application of EU Regulation 2026/2108 would have a negative impact on Northern Ireland because it would result in Northern Ireland's Loss of Dual Market Access.

The Department of the Economy Written Answers provided on 12 October stated:

'The UCC is one of the key mechanisms that underpins Northern Ireland's (NI) access to the EU market. Its application in NI helps provide assurance that goods entering the EU market via NI are subject to the same arrangements as elsewhere in the EU. This is a key part of the legal and operational framework that enables NI businesses to benefit from their unique dual market access, with privileged access to both the UK internal market and the EU market.'[11]

Similarly, the Cabinet Office stated in its response of 12 October:

[10] 20261017-aj-power.pdf

[11] https://www.niassembly.gov.uk/globalassets/committee-blocks/windsor-framework-democratic-scrutiny-committee/reg-eu-20262108/dfe-written-answers-red.pdf

'The Government's assessment is that, if the reforms did not apply in NI, divergence between the customs frameworks in NI and the EU could risk NI's access to the EU market and its ability to benefit from dual market access. Securing dual market access while protecting NI's place in the UK internal market is central to the Windsor Framework arrangements.'[12]

The Government made this public before the consultation on the published EU Act and businesses and other consultees responded to that assertion explaining why the loss of 'Dual Market Access' was not a loss such that the Non-Application of EU Regulation 2026/2108 would not have a more negative than positive impact. However, the Government response simply reasserted what it had already said, namely that the loss of Dual Market Access would be negative, leaving the points raised without any satisfactory answers. The submissions are very clear that Dual Market Access has NOT been a net positive for Northern Ireland and indeed the point has been expressed that the term is inherently misleading.

The points made by the consultation submissions include:

i. That if so-called Dual Market access afforded Northern Ireland the standing as 'the world's most exciting economic zone', such that Northern Ireland would uniquely access both the rest of its home economy and the Republic of Ireland and wider European Union, then we would inevitably see multiple examples of Foreign Direct Investment into Northern Ireland to access what cannot be accessed in any other part of the world. However, neither Invest NI nor the Department of the Economy have been able to identify a single example of Foreign Direct Investment into Northern Ireland to access 'Dual Market Access.' The Government ignored this point and instead referenced one company that has developed in a content where it sells principally across the island of Ireland. First, this does not validate the Dual Market Access point in the way one would expect because the company in question is not the result of inward Investment. Second, it only serves to highlight how if your business model involves selling across the whole island of Ireland then rather than being in a UK Internal Market for Goods you are better served by being in an all-Island Single Market for Goods. That has been obvious from day one and does not present unique 'dual market access' but a different internal market access (all Island internal market access, rather than UK Internal Market access). Moreover, and crucially, we have to have regard for the net effect of the change mindful that there are many more companies in NI that depend on unfettered access to the rest of the UK, the sixth largest economy in the world, than to the Republic of Ireland.

ii. That the Government completely ignored the points made by consultation submissions that the Windsor Framework does not afford Northern Ireland unfettered access to the rest of the UK economy but rather extraordinarily, in its response, went on to affirm this assertion which as a number of submissions pointed out is demonstrably untrue. The Government states: 'Northern Ireland is already benefitting from Dual Market Access as the world's only economy with seamless access to both the UK Internal Market and the EU Single Market' when it patently does not have seamless access to the inputs for its manufacturing from the greater part of its home economy, a huge problem when Northern Ireland only constitutes a tiny part of its home economy.

As the Inter-Trade UK Business Association pointed out: *'The ability to sell goods into the EU is not an unqualified advantage if Northern Ireland businesses cannot obtain the goods and inputs they need from their largest domestic market, Great Britain, without additional customs requirements, cost and uncertainty. The opportunity to sell into one market cannot sensibly be assessed separately from the ability to source competitively from another. Manufacturers know, that this is not an abstract constitutional argument but a practical commercial issue. If essential inputs are unavailable at the right*

[12] https://www.niassembly.gov.uk/globalassets/committee-blocks/windsor-framework-democratic-scrutiny-committee/reg-eu-20262108/h.-20261012-ukg-response.pdf

price in RoI, or sourcing them from GB becomes more burdensome, the ability to sell finished goods into the EU may be of little value. Northern Ireland's longstanding integration with the UK economy must be considered alongside any claimed benefits from access to the EU market.'[13]

As AJ Power points out: *'The reality is that the current "border" arrangements put a significant cost and regulatory burden on NI manufacturers. These costs are not incurred by GB manufacturers that still have access to EU markets through the TCA. In simple terms GB manufacturers have the benefits without the costs, other than one customs entry into the EU. NI manufacturing companies can have the costs of hundreds of customs entries to make one product that maybe sold to the EU. It is somewhat damning that in the many years since inception (of so-called dual market access) I am unaware of any Foreign Direct Investment in the manufacturing space. The so called benefits do not stand-up to scrutiny but the costs to support this myth are reality.'*[14]

As Redacted observes: *'For many businesses, reliable access to suppliers, products and inputs from Great Britain remains a key component of commercial viability.'*[15]

Redacted states: *'Since the introduction of the Windsor Framework, the UK government (primarily via Invest NI) and MSM have been promoting dual market access as a benefit to all. This is simply NOT the case.'*[16]

The idea of increasing the scope for selling one's goods and growing one's economy by increasing one's net unfettered sales access is only a benefit if Northern Ireland is still able to produce the goods at competitive prices for sale in that enlarged unfettered sales market. There is no benefit to be had by increasing market reach for sales if this is secured by sacrificing unfettered access to the inputs from your home economy on which your ability to be competitive depends.

In the real-world unfettered access is a two-way street.

Trying to pretend that Northern Ireland has unfettered access to the rest of its home economy on the basis that it can sell most goods into GB unfettered as if its only utility is as a market for selling rather than being an inherent part of the home market of which NI is a part, providing the greater part of its inputs and goods, is absurdly disingenuous. It depends on trying to break up interdependent parts of a whole abstracting one from the other and then trying to sell the abstraction as a gain. It is like expecting someone to be grateful because you commit to their right to 'breath out' even as you inform them that they no longer can 'breath in'. The two are interdependent parts of the other.

This is hugely important because when one confronts the fact that the Dual Market Access arguments do not stack up, the entire basis for the Government's assertion that not applying the new law will have a more negative impact on Northern Ireland than applying it, falls away.

In the face of these realities the Government needs to respond with reasoned arguments about why being cut off from unfettered input access to the greater part of one's home economy - the 6th largest economy in the world - constitutes a credible expression of Dual Market Access and why it is worth paying the very high price of EU 2026/2108 to preserve this debilitating disadvantage.

Conclusion

Given: 'that 'The content or scope of the Union act as amended or replaced by the specific Union act significantly differs, in whole or in part, from the content or scope of the Union act as applicable before being amended or replaced.''

[13] 20261016-intertrade-ukba.pdf
[14] 20261017-aj-power.pdf
[15] 20261016-mtgroup.pdf
[16] 20261017-gray-adams.pdf

Given that ‘‘The application in Northern Ireland of the Union act as amended or replaced by the specific Union act, or of the relevant part thereof as the case may be, would have a significant impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist.’’

Given that: ‘‘MLAs have sought prior substantive discussion with the UK Government and within the Northern Ireland Executive to examine all possibilities in relation to the Union act; taken steps to consult businesses, other traders and civic society affected by the relevant Union act; and made all reasonable use of applicable consultation processes provided by the European Union for new Union acts relevant to Northern Ireland.’’

And given that ‘‘The notification is only being made in the most exceptional circumstances and as a last resort, having used every other available mechanism,’ the concerns raised by consultees having been either ignored or provided with an unsatisfactory explanation.

We now have no alternative but to pull the Brake.