

OPINION ON THE WINDSOR FRAMEWORK

I am asked for my independent legal opinion on the following question: “*Would it be possible to alter the domestic impact of the Protocol/Windsor Framework without either (a) amending or disapplying section 7A of the EUWA 2018?; (b) substantive changes to the Protocol/Windsor Framework agreed by the UK and EU; or (c) without invoking Article 16 of the Protocol and taking measures contemplated by the terms of that Article?*”

I AM ASKED BY UNIONIST VOICE POLICY STUDIES – WITH WHOM I HAVE NO AFFILIATION

1. The Protocol on Ireland/Northern Ireland (“the Protocol”) formed part of the Withdrawal Agreement between the UK and the EU. It is now known as the Windsor Framework.
2. Broadly, Article VI of the Union with Ireland Act 1800 establishes a right for those living in Northern Ireland who are British subjects/citizens, to equal treatment with the rest of the UK¹. These rights are called ‘the trade limb’ and ‘the treaty limb’. This enshrines a principle of territorial integrity (which most countries have).
3. Indeed, territorial integrity is a recognised principle of international law. It is enshrined in Article IV of the [Helsinki Final Act of 1975](#)² and [Article 2 of the UN Charter](#).
4. During the legal challenge to the Protocol, the [Allister](#) case, it was established in the High Court and in the Court of Appeal and in the Supreme Court that section 7A of the EU Withdrawal Act 2018 modifies the territorial effect of Article VI of the Union with Ireland Act 1800. The effect is that while section 7A of the EU Withdrawal Act 2018 is in existence, Article VI is “subject to” it. Effectively the newer statute trumps the older, at least until it should ever be repealed.
5. The Court of Appeal asked the Supreme Court to answer the following question, “*Did the Court of Appeal err in law by concluding that section 7A(3) of the European Union (Withdrawal) Act 2018, as amended, lawfully modifies article VI of the Acts of Union 1800?*”. And the Supreme Court said no, section 7A is lawful.
6. The modification is lawful because Parliament is sovereign, and it has expressed a clear wish to implement the (then) Protocol. Any unincorporated international law is disappplied – which is again, constitutionally normal, if that is the will of Parliament.
7. If anyone wanted to restore Article VI of the Union with Ireland Act 1800, they would need to do any one of the three things I am asked. Ultimately Parliament retains power to act.

STEVEN BARRETT, 23/01/24

¹ Although the extent of that right was not before the Supreme Court in *Allister* [2023] UKSC 5 – see paragraph 54

² See also *Contingent Sovereignty, Territorial Integrity and the Sanctity of Borders*, Stuart Elden, *The SAIS Review of International Affairs*, Vol. 26, No. 1 (Winter-Spring 2006), pp. 11-24 (14 pages)