



Post-Brexit Governance NI

Post-Brexit Clinic



Prof. Katy Hayward
Prof. Billy Melo Araujo
Prof. David Phinnemore
Dr. Lisa Claire Whitten

05 November 2024

*Governance for 'a place
between': The multilevel
dynamics of implementing
the Protocol on
Ireland/Northern Ireland*

[https://www.qub.ac.uk/sites/
post-brexit-governance-ni/](https://www.qub.ac.uk/sites/post-brexit-governance-ni/)

[@PostBrexitGovNI](#)

Moving Goods

Testing the Temperature XII (October 2024)

Article 2, Rights and *Dillon*

Democratic Consent

The Protocol/Windsor Framework in 2024



Now we are still having to manage the consequences of the UK's decision to leave the European Union, in a way that does not unnecessarily inhibit trade and commerce across the Irish Sea. **That is why this Government is absolutely committed to fully implementing the Windsor Framework, pragmatically and in good faith.**

It is not without its challenges - I think that is probably the understatement of the year - but it is necessary. And there is a much bigger prize in sight.

The Government is committed to improving the UK's trading relationship with the EU, including through the negotiation of a sanitary and phytosanitary agreement which would have the potential to dramatically smooth the movement of food, animals and plants across the Irish Sea.

Hilary Benn MP, Secretary of State for Northern Ireland, British-Irish Chamber of Commerce, Dublin, 24.10.24





Moving Goods



*Governance for 'a place
between': The multilevel
dynamics of implementing
the Protocol on
Ireland/Northern Ireland*

[https://www.qub.ac.uk/sites/
post-brexite-governance-ni/](https://www.qub.ac.uk/sites/post-brexite-governance-ni/)

[@PostBrexiteGovNI](#)

Moving Goods



The Windsor Framework and its impact for Northern Ireland and EU-UK Relations?

Billy Melo Araujo

28 September 2023

Some concluding remarks

- Solving old problems by creating new ones
- Not the end of the road ...
- Dilution reached its limits?

Post Brexit custom processes for parcels delayed



GETTY IMAGES
New customs processes for parcels and freight have been delayed

Plans for UK-wide 'Not for EU' labelling dropped



European Union is 'dividing UK with electric car border'

Northern Ireland is being made to enforce a 'protectionist tariff' on imports of Chinese models in a move drawn up by Brussels

James Cragg, Europe Editor
Queen's University Belfast
Transport
Guardian.com

Related Topics
European Union, Electric cars
Northern Ireland, China
14 October 2024 8:00pm BST

CT788
X f s B



Electric cars built in China will face the EU's 'tariff' on imports of Chinese models in a move drawn up by Brussels

Keir Starmer looks for post-Brexit 'reset' in meeting with EU leaders

UK prime minister travels to Brussels for talks on improving ties with bloc amid warnings not to expect an easy ride



Keir Starmer is focused on the idea of a wide-ranging EU/UK security pact, covering issues such as defence, migration and security
© Benjamin Crisp/Getty Images



Article 2, Rights and *Dillon*



*Governance for 'a place
between': The multilevel
dynamics of implementing
the Protocol on
Ireland/Northern Ireland*

[https://www.qub.ac.uk/sites/
post-brexit-governance-ni/](https://www.qub.ac.uk/sites/post-brexit-governance-ni/)

[@PostBrexitGovNI](#)

Article 2

Rights of Individuals

1. The United Kingdom shall ensure that **no diminution** of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Protocol, and shall implement this paragraph through dedicated mechanisms.
2. The United Kingdom shall continue to facilitate the related work of the institutions and bodies set up pursuant to the 1998 Agreement, including the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland and the Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland, in upholding human rights and equality standards.

The Protocol/Windsor Framework and Rights

37. These talks need not look at all aspects of the Protocol. The longstanding arrangements for the Common Travel Area, the workings of the all-island Single Electricity Market, and the provisions that ensure there is no diminution of human rights in Northern Ireland as a result of the UK's withdrawal from the European Union are not controversial. The focus should be on the arrangements covering trade in goods and on the overarching institutional framework put in place by the Protocol. It is in those aspects that the current provisions have led to the perceptions of unfairness and imbalance. It is here that we must find the new balance.

UK Government, *NI Protocol: The Way Forward*, [July 2021](#)

Northern Ireland Human Rights Commission begins a legal challenge of the Illegal Migration Act

03 Oct 2023

NIHRC, [3 October 2023](#)

Northern Ireland High Court finds Illegal Migration Act is incompatible with European Convention on Human Rights and EU Withdrawal Agreement

EIN, [13 May 2024](#)

Article 2 and the Legacy Act

Irish government launches legal challenge against UK's Northern Ireland Legacy Bill

Sky News, [20 Dec 2023](#)

NI Troubles: Legacy Act immunity clause 'breaches' human rights

BBC News, [28 Feb 2024](#)

Benn will not put timeline on repeal of Troubles act

BBC News, [17 Jul 2024](#)



Northern Ireland Troubles (Legacy and Reconciliation) Act 2023

CHAPTER 41

CONTENTS

PART 1

THE TROUBLES

1 Meaning of "the Troubles" and other key expressions

July 2024

Secretary of State for Northern Ireland:

"Whilst the Government are unwavering in its commitment to the obligations under article 2(1) of the Windsor Framework, this judgment [NIHC, *Dillon*] has potentially wide-ranging implications for other UK legislation which extends to Northern Ireland. Therefore, we have asked the court to continue with its consideration of the interpretation and effect of article 2(1) given the **profound constitutional and legal questions that have arisen** from the ruling. This is a technical point of law which we hope will be clarified by an onward appeal, for the benefit of ensuring legal certainty and in maintaining a clear human rights framework in Northern Ireland."

Dillon and others vs Secretary of State for Northern Ireland

This 'wide-ranging appeal' that engaged 'many complicated issues' was broken down by NICA into six 'essential questions':

Core of the Appeal



(i) Was the trial judge at first instance entitled to disapply provisions of the 2023 Act under article 2(1) of the Windsor Framework?



(ii) Was the trial judge right to issue declarations of incompatibility against provisions of the 2023 Act for the Act's failure to comply with articles 2 and 3 ECHR?

Core of the Cross-Appeal

(iii) Was the trial judge wrong to find no violation of the ECHR with respect to the ICRIR's ability to comply with its obligations under the ECHR?

+ ancillary issues: re ECHR article 8 and *Jordan*; incompatibility and *Fitzsimmons*; standing and *Gilvary*

‘Windsor Framework Arguments’:

“a frontal attack”

NI Secretary appealed on grounds that NI High Court had erred in finding provisions of the Legacy Act to be **incompatible with WF Article 2(1)** and erred by **disapplying them pursuant to s7A EUWA 2018**.

Can Article 2(1) WF be relied on?	Are VD and/or CFR rights justiciable in this context?
Has there been diminution of rights as per SPUC test?	Is disapplication of primary law mandated as a remedy?

direct effect?

‘Windsor Framework Arguments’: NICA analysis...

Can Article 2(1) WF be relied on? **YES.**

NICA judgment = Article 2(1) has direct effect in view of Article 4 WA + section 7A EUWA 2018

*"Having considered all of the above, we find that **article 2(1) WF is directly effective**. First and foremost, the non-diminution guarantee is expressed in clear and unambiguous terms. The UK "shall ensure that no diminution of rights... results from its withdrawal from the Union". The meaning of **this provision speaks for itself**. In addition, the nature of the prohibition on diminution of rights makes it ideally adapted to produce direct effects in the legal relationship between the state and its citizens."*

para [85]

UK plans to further appeal Northern Ireland amnesty ruling



“The Court of Appeal judgment is complex and wide-ranging.

“We require further time to consider fully its implications and next steps and intend to bring clarity and certainty as soon as possible.

“In the meantime, the government has lodged an application with the Court of Appeal seeking leave to appeal the judgment.”

Post-Brexit Governance NI

Testing the Temperature XII

LucidTalk/QUB poll, 18-21 October

*Governance for 'a place
between': The multilevel
dynamics of implementing
the Protocol on
Ireland/Northern Ireland*

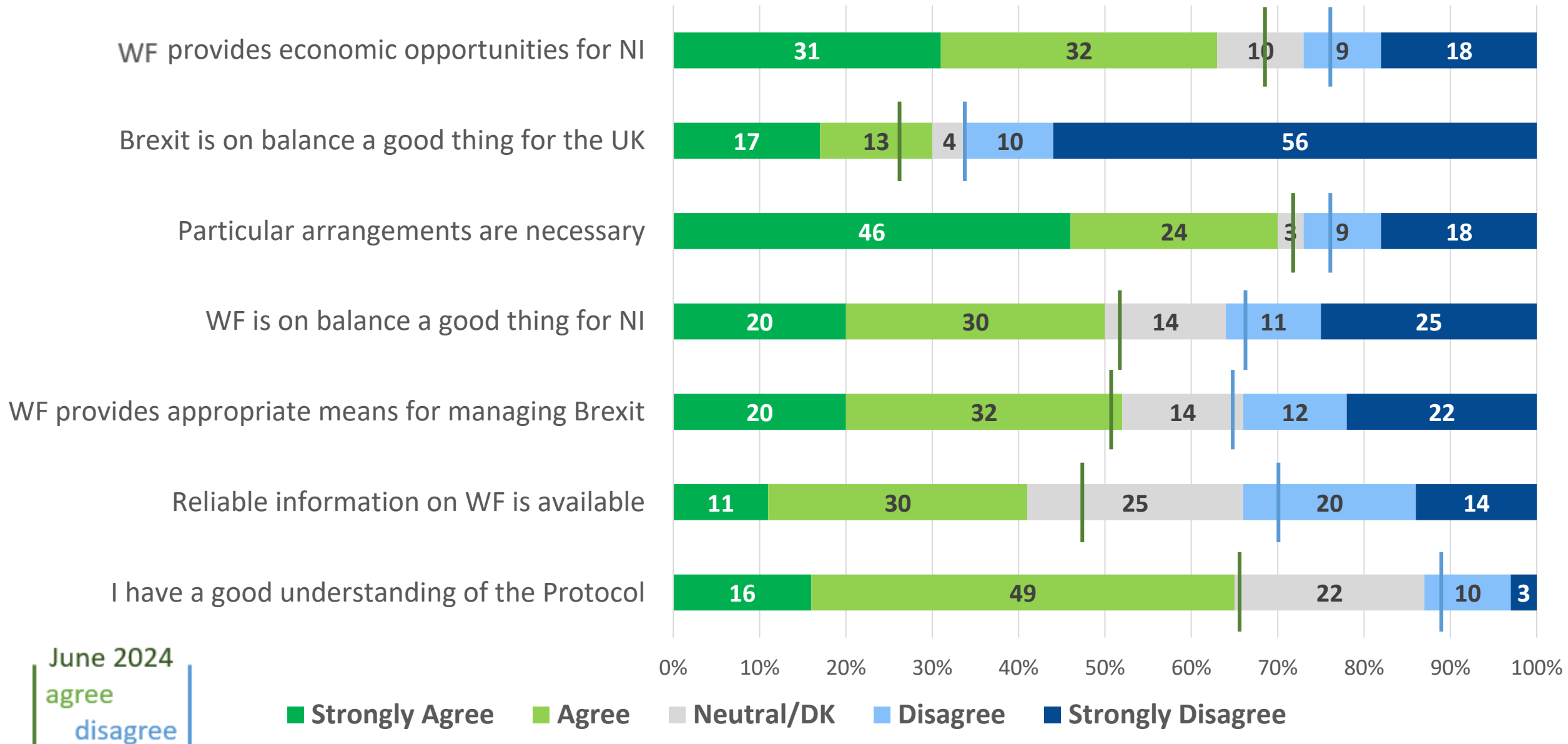
[https://www.qub.ac.uk/sites/
post-brexit-governance-ni/](https://www.qub.ac.uk/sites/post-brexit-governance-ni/)

[@PostBrexitGovNI](#)

Responses: 2711; Weighted Sample: 1020

Margin of error +/- 2.3% at 95% confidence

Opinion of the Windsor Framework

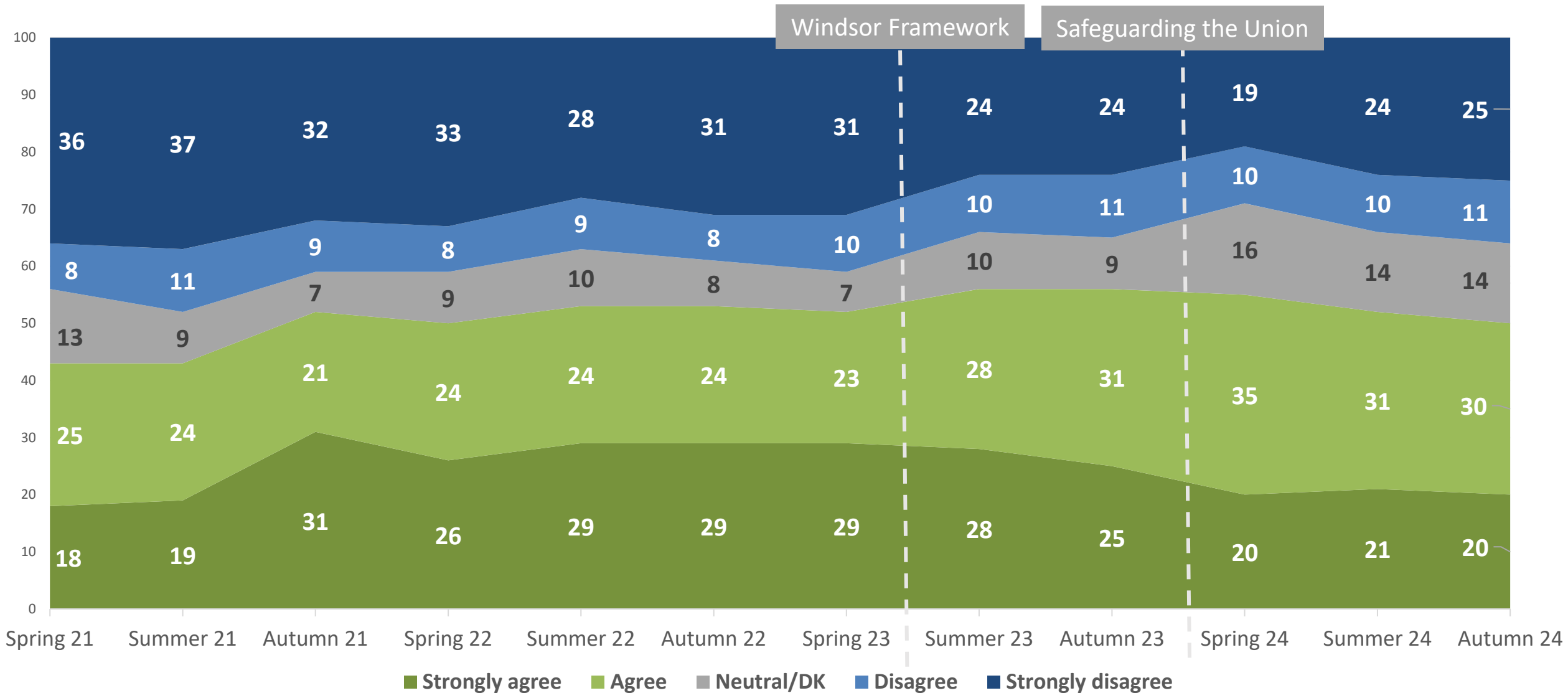


Testing the Temperature XII - What do NI Voters Think about the Protocol/Windsor Framework, 18-21 October 2024. Weighted Sample: 1,020

(<https://www.qub.ac.uk/sites/post-brexit-governance-ni/ProjectPublications/OpinionPolling/>)

'Protocol/Windsor Framework is on balance a good thing for Northern Ireland'

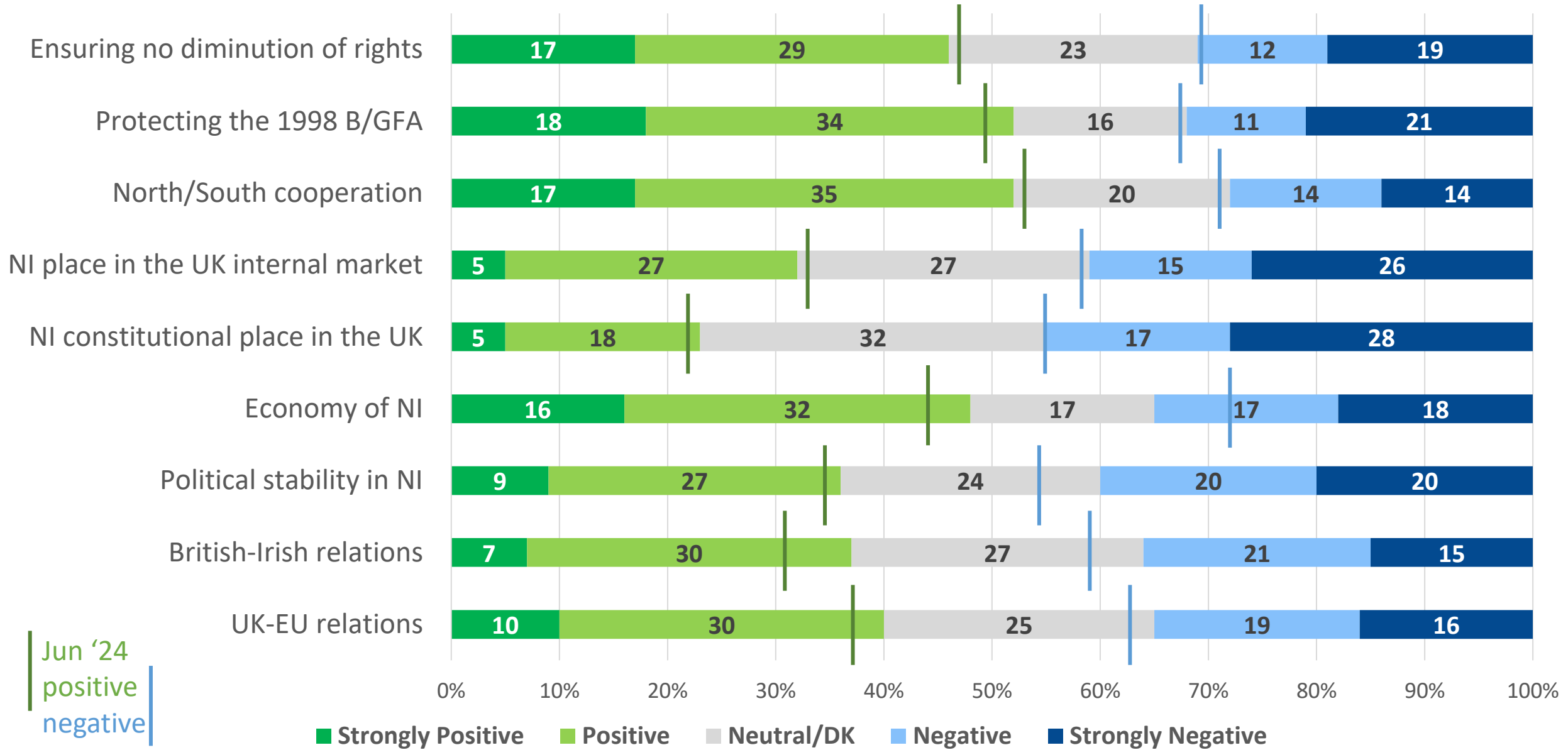
(March 2021 - October 2024)



Testing the Temperature XII - What do NI Voters Think about the Protocol/Windsor Framework, 18-21 October 2024. Weighted Sample: 1,020

(<https://www.qub.ac.uk/sites/post-brexit-governance-ni/ProjectPublications/OpinionPolling/>)

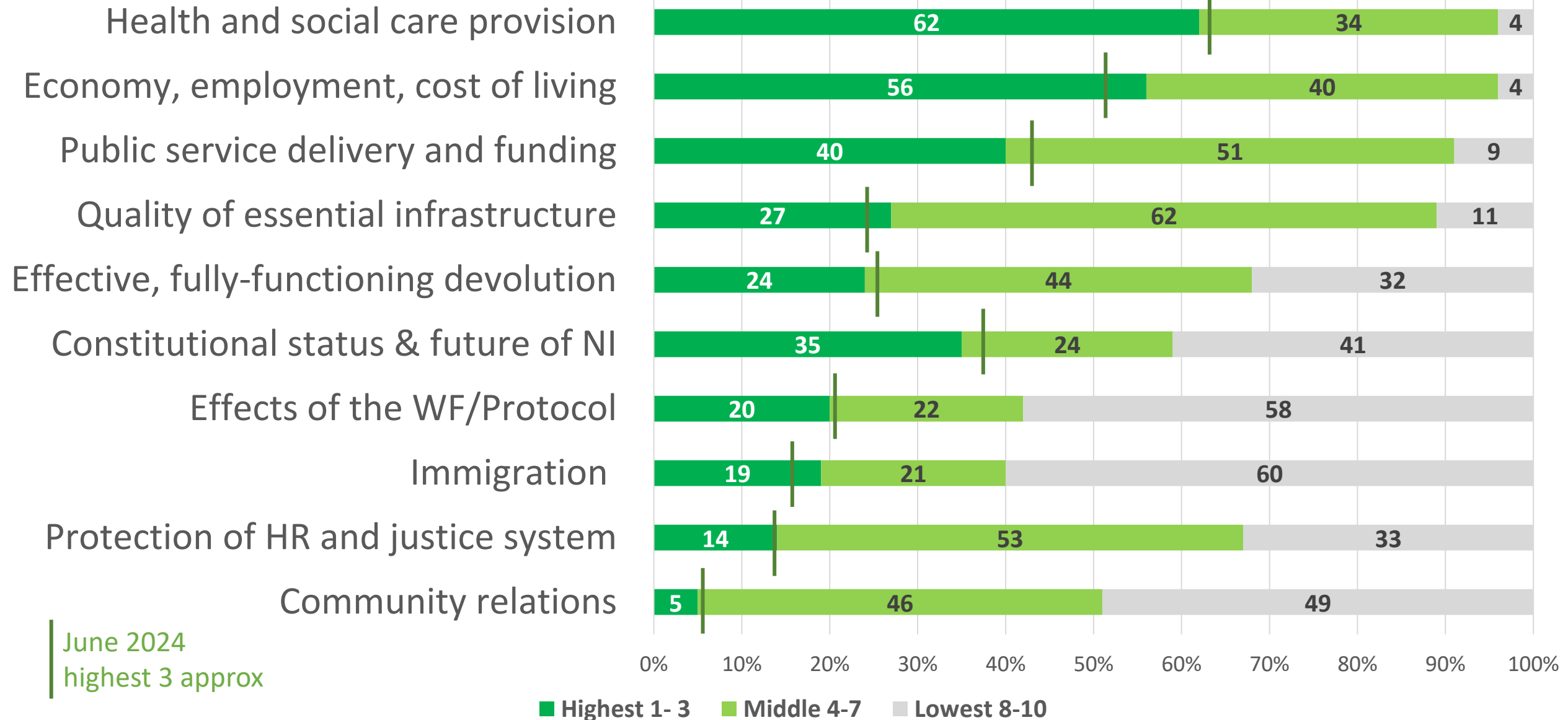
Perceived Impact of the Protocol/Windsor Framework



Testing the Temperature XII - What do NI Voters Think about the Protocol/Windsor Framework, 18-21 October 2024. Weighted Sample: 1,020

(<https://www.qub.ac.uk/sites/post-brexit-governance-ni/ProjectPublications/OpinionPolling/>)

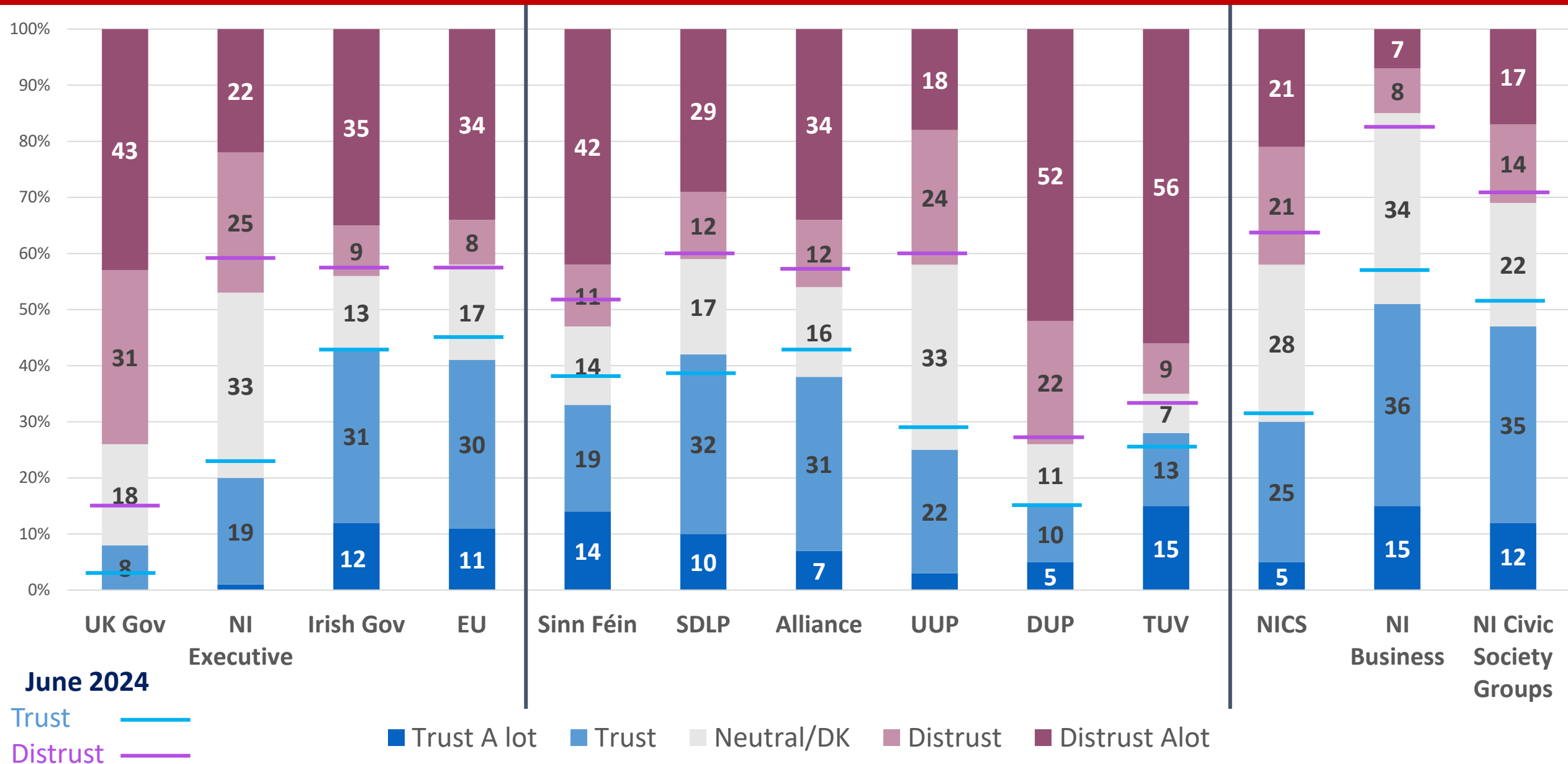
Relative weighting of issues of concern



Testing the Temperature XII - What do NI Voters Think about the Protocol/Windsor Framework, 18-21 October 2024. Weighted Sample: 1,020

(<https://www.qub.ac.uk/sites/post-brexit-governance-ni/ProjectPublications/OpinionPolling/>)

Trust in Managing NI Interests in Relation to the Windsor Framework (%)



Testing the Temperature XII - What do NI Voters Think about the Protocol/Windsor Framework, 18-21 October 2024. Weighted Sample: 1,020

(<https://www.qub.ac.uk/sites/post-brexit-governance-ni/ProjectPublications/OpinionPolling/>)

Public Understanding of the Windsor Framework

I expect WF will remain a point of contestation in NI politics for the foreseeable future

It's important public opinion on the WF continues to be measured in polls like these

The NI Assembly is doing a good job debating NI's interests re: WF

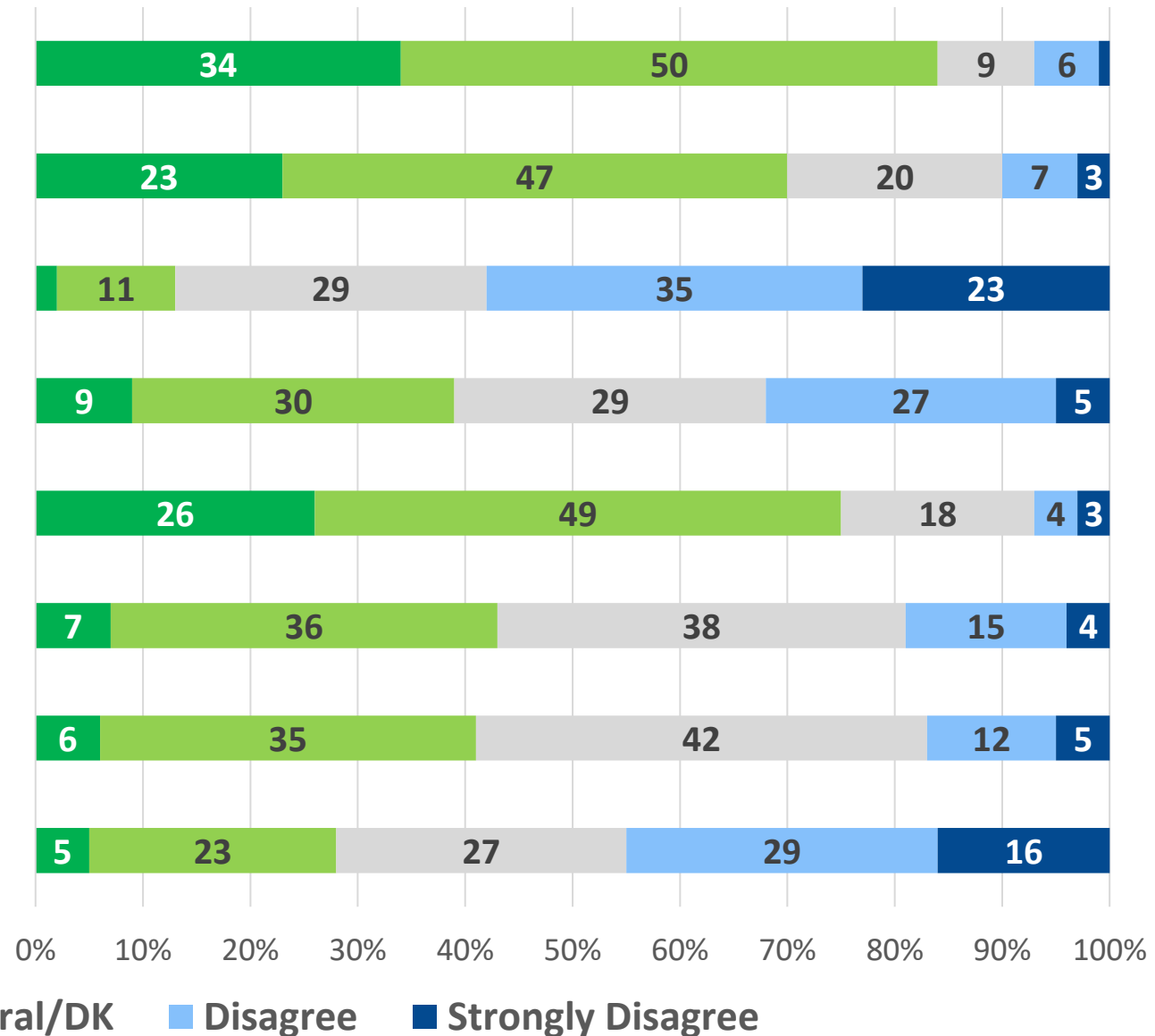
The WF arrangements are too complex to be fully understood

I would like to see the UK/EU jointly present more factual info on the WF

Polls like this have encouraged me to find out more about the WF

Completing polls on the WF has added to my understanding

There is sufficient media coverage on the WF to voters to be informed on its actual effects



Testing the Temperature XII - What do NI Voters Think about the Protocol/Windsor Framework, 18-21 October 2024. Weighted Sample: 1,020

(<https://www.qub.ac.uk/sites/post-brexite-governance-ni/ProjectPublications/OpinionPolling/>)



Democratic Consent

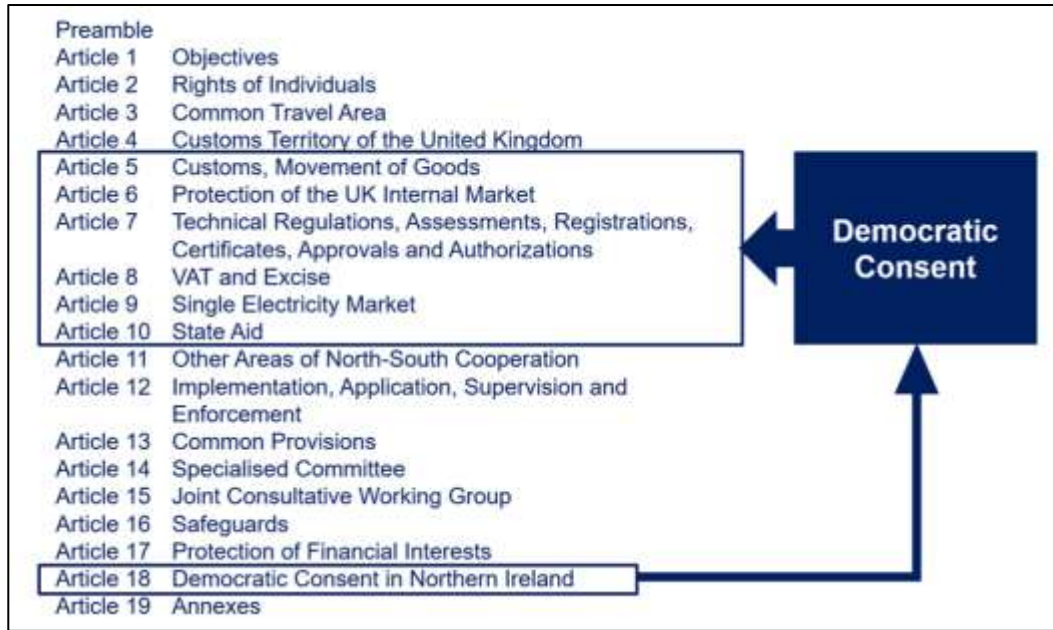


*Governance for 'a place
between': The multilevel
dynamics of implementing
the Protocol on
Ireland/Northern Ireland*

[https://www.qub.ac.uk/sites/
post-brexite-governance-ni/](https://www.qub.ac.uk/sites/post-brexite-governance-ni/)

[@PostBrexiteGovNI](#)

Democratic Consent

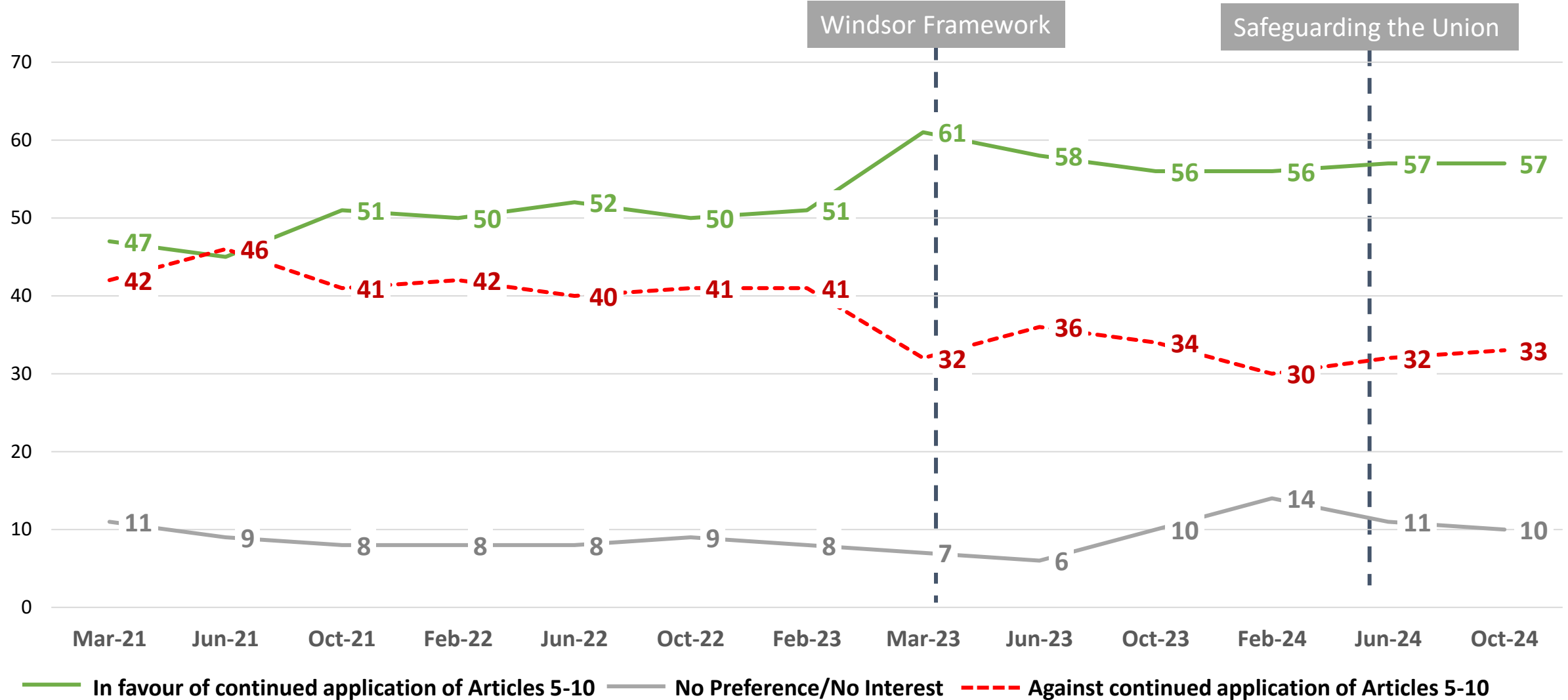


September	Public consultation process
31 October	Deadline for Secretary of State to announce 'new continuation period' from 1 January 2025 for Protocol/Windsor Framework and give notification of 'democratic consent process'
1 November	Start of 'Democratic Consent Process'
30 November	Deadline for First Minister and deputy First Minister 'acting jointly' to table a motion for democratic consent
6 December	Deadline for MLAs to table a motion for democratic consent if one is not tabled by First Minister and deputy First Minister
16 December	Deadline for MLAs to vote on a motion for democratic consent
17 December	Required sitting day where MLAs have not yet voted on a motion for democratic consent
26 December	Deadline for Secretary of State to be notified of outcome of MLAs' vote
31 December	Deadline for Secretary of State to notify European Commission of outcome of democratic consent process

Party	Designation	MLAs	Anticipated Position	Total	%
Alliance	Other	17	For	53	59%
PBP	Other	1	For		
SDLP	Nationalist	8	For		
Sinn Féin	Nationalist	27	For		
DUP	Unionist	26	Against	27	30%
TUV	Unionist	1	Against		
Independents	Unionist	1	TBC	10	11%
UUP	Unionist	9	TBC		

Democratic Consent in 2024

Based on what you currently know, and are experiencing now, how would you like the MLAs for whom you vote[d] in the 2022 NI Assembly election to vote in 2024 on the Protocol? (%)



Testing the Temperature XII - What do NI Voters Think about the Protocol/Windsor Framework, 18-21 October 2024. Weighted Sample: 1,020

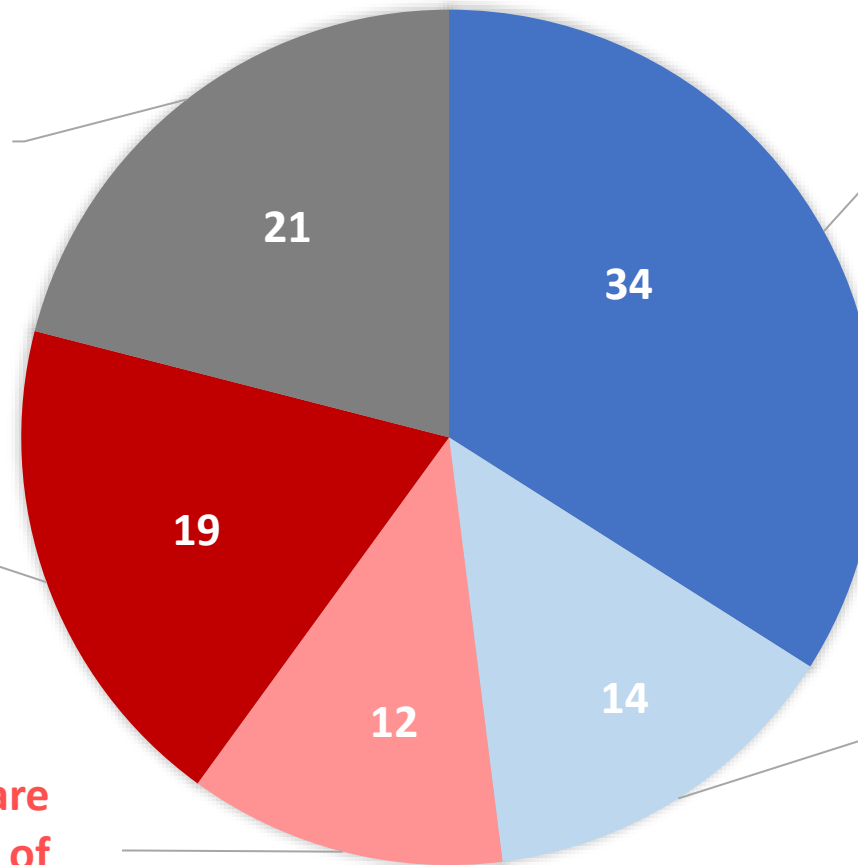
(<https://www.qub.ac.uk/sites/post-brexit-governance-ni/ProjectPublications/OpinionPolling/>)

Democratic Consent in 2024... and Election Preferences

If an election to the NI Assembly were held during the next six months, how important do you think a candidate's position on the Protocol would be for your vote? [%]

A candidate's position on the Protocol/Windsor Framework would not determine whether I vote for them or not

I would vote for candidates who are in favour of continuing the application of Articles 5-10



I would vote for candidates who support the continued application provided evidence arrangements benefitting NI

I would vote for candidates who are in favour of scrapping the Protocol/Windsor Framework altogether

I would vote for candidates who are against the continued application of Articles 5-10

Democratic Consent



Q&A
ON THE DEMOCRATIC
CONSENT VOTE 2024

At some point before the end of the calendar year, the Members of the Northern Ireland Assembly (MLAs) will be asked to participate in something called the 'Democratic Consent Vote'. Here's a brief Q&A on what the Vote is and what it's about.

WHAT IS THE DEMOCRATIC CONSENT VOTE?
The Windsor Framework, formally known as the Protocol on Ireland/Northern Ireland, formed part of the Brexit Withdrawal Agreement between the United Kingdom and the European Union and came into effect on 1 January 2021. As part of that deal, the UK government agreed to provide an opportunity for MLAs to determine whether a vote part of the Windsor Framework could continue. This is the 'Democratic Consent Vote'.

WHAT PART OF THE WINDSOR FRAMEWORK DOES THE VOTE AFFECT?
The Democratic Consent Vote is specifically about the continued application of Articles 5-10 of the Windsor Framework. Articles 5-10 lay out the rules for the free movement of goods between the UK and Northern Ireland, and also set out the rules for the free movement of goods between the EU and Northern Ireland. The vote will be held on whether the UK government should continue to apply Articles 5-10 of the Windsor Framework to Northern Ireland, or whether it should apply the rules of the EU to Northern Ireland.

WHAT ABOUT OTHER PARTS OF THE WINDSOR FRAMEWORK?
The Windsor Framework also includes other parts of the Framework, such as the rules on the free movement of people, the rules on the free movement of services, and the rules on the free movement of capital. These parts of the Framework will continue to apply to Northern Ireland, regardless of the outcome of the Democratic Consent Vote.

WHAT CAN I EXPECT TO HAPPEN BEFORE THE VOTE?
The UK government will be required to hold a public consultation on the Democratic Consent Vote. This will allow the public to express their views on the issue. The results of the consultation will be taken into account by the UK government when it decides whether to apply Articles 5-10 of the Windsor Framework to Northern Ireland.

WHAT PASSES THE WINDSOR FRAMEWORK?
The Windsor Framework is a legal agreement between the UK and the EU. It is not a treaty, and it is not subject to ratification. It is a framework for the future of the UK-EU relationship, and it is designed to be flexible and adaptable to changing circumstances.

Post-Brexit Governance NI – Explainer No. 16

The Protocol/Windsor Framework and the 2024 Democratic Consent Vote

David Pinnerford and Lisa Claire Whelan¹

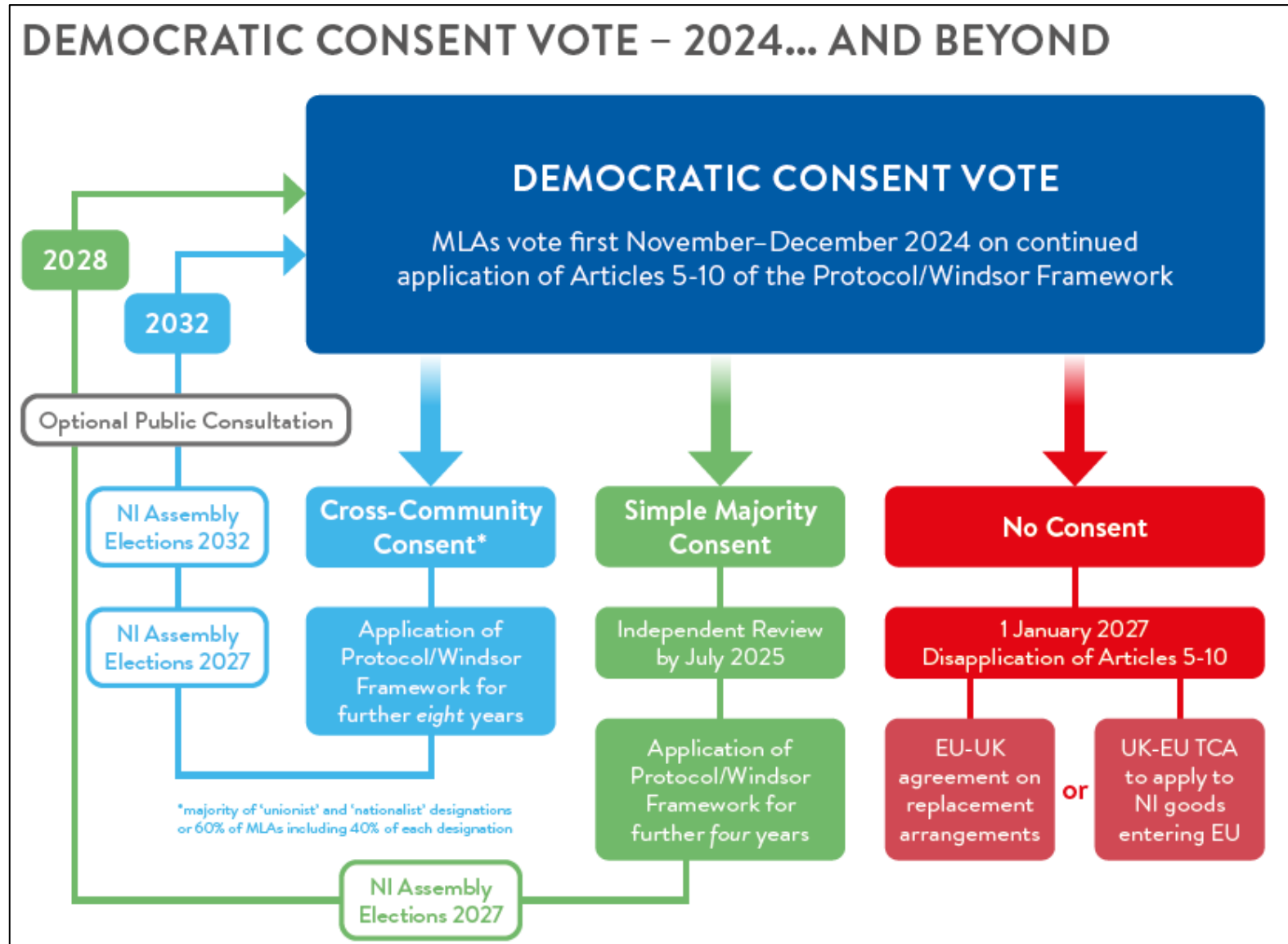
August 2024

Introduction

An important feature of the [Protocol on Ireland/Northern Ireland](#) – now widely referred to as the Windsor Framework – is the 'democratic consent mechanism'. It obliges the UK government to provide members of the Northern Ireland Assembly (MLAs) with the opportunity to grant their 'democratic consent' to the continued application of core provisions of the Protocol/Windsor Framework. These provisions – Articles 5-10 – concern arrangements for the free movement of goods on the island of Ireland and therefore the location and requirements of post-Brexit customs and regulatory checks on goods entering Northern Ireland (NI), including those from Great Britain (GB). A first 'democratic consent' vote is scheduled to take place in late 2024.

Assuming MLAs grant 'democratic consent', the current Protocol/Windsor Framework arrangements will continue to apply but MLAs will be provided with a further opportunity to vote on Articles 5-10 after four or eight years, depending on whether their vote in favour of consent is by a simple or cross-community majority. Where a democratic consent vote is held, and there is no majority in favour of consent, Articles 5-10 of the Protocol/Windsor Framework cease to apply after two years.

The existence of the democratic consent mechanism means that there is an element of uncertainty about the medium- to long-term future of the post-Brexit arrangements for Northern Ireland. The outcome of the 2024 vote – as well as any democratic consent votes thereafter – will therefore be of vital importance for the UK as a whole, for Ireland, and for UK-Ireland and UK-EU relations.





Post-Brexit Governance NI

Post-Brexit Clinic

Prof. Katy Hayward
Prof. Billy Melo Araujo
Prof. David Phinnemore
Dr. Lisa Claire Whitten

05 November 2024

*Governance for 'a place
between': The multilevel
dynamics of implementing
the Protocol on
Ireland/Northern Ireland*

[https://www.qub.ac.uk/sites/
post-brexit-governance-ni/](https://www.qub.ac.uk/sites/post-brexit-governance-ni/)

[@PostBrexitGovNI](#)

Friday 29 November 2024

Article 2 Windsor Framework: Unpacking Law and Policy Challenges

Hybrid Event: Moot Court Room, QUB School of Law / Online via Zoom

<https://www.eventbrite.co.uk/e/article-2-of-the-windsor-framework-unpacking-law-and-policy-challenges-tickets-1065101871369>

Wednesday 18 December 2024 - TBC

Where Next for the Windsor Framework?

Canada Room/Council Chamber, QUB