



House of Commons
European Scrutiny Committee

**UK-EU Joint Committee:
Decision of 12 June
2020 amending the
Withdrawal Agreement**

Twelfth Report of Session 2019–21

*Report, together with formal minutes relating
to the report*

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Notes

Numbering of documents

Three separate numbering systems are used in this Report for European Union documents:

Numbers in brackets are the Committee's own reference numbers.

Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.

Numbers preceded by the letters COM or SEC or JOIN are Commission reference numbers.

Where only a Committee number is given, this usually indicates that no official text is available and the Government has submitted an "unnumbered Explanatory Memorandum" discussing what is likely to be included in the document or covering an unofficial text.

Abbreviations used in the headnotes and footnotes

AFSJ	Area of Freedom Security and Justice
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
ECA	European Court of Auditors
ECB	European Central Bank
EEAS	European External Action Service
EM	Explanatory Memorandum (submitted by the Government to the Committee)*
EP	European Parliament
EU	European Union
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
SEM	Supplementary Explanatory Memorandum
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Euros

Where figures in euros have been converted to pounds sterling, this is normally at the market rate for the last working day of the previous month.

Further information

Documents recommended by the Committee for debate, together with the times of forthcoming debates (where known), are listed in the European Union Documents list, which is published in the House of Commons Vote Bundle each Monday, and is also available on the parliamentary website. Documents awaiting consideration by the Committee are listed in "Remaining Business": www.parliament.uk/escom. The website also contains the Committee's Reports.

*Explanatory Memoranda (EMs) and letters issued by the Ministers can be downloaded from the Cabinet Office website: <http://europeanmemoranda.cabinetoffice.gov.uk/>.

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UK-EU Joint Committee: Decision of 12 June 2020 amending the Withdrawal Agreement¹

This EU document is legally and politically important because:

- it formed the basis for a number of technical amendments to the Withdrawal Agreement governing the UK's exit from the EU relating to the financial settlement and coordination of social security rules, which the EU and the Government agreed at a meeting of the UK-EU Joint Committee on 12 June 2020.
- while the EU had also put forward an additional 11 amendments that would adjust the Protocol on Ireland/Northern Ireland, the Government declined to approve those at the meeting on 12 June. It is unclear at present whether Ministers are continuing to discuss those amendments with the EU, or whether they have been definitively rejected.

Action

- The Committee has written to the Minister for the Cabinet Office (Rt Hon. Michael Gove MP) seeking further clarification of the Government's position on the proposed amendments to the Protocol in particular, and reiterating the need for certain commitments on parliamentary scrutiny of future activities of the UK-EU Joint Committee.
- The Committee draws its conclusions to the attention of the Committee on the Future Relationship with the EU, the Foreign Affairs Committee, the Home Affairs Committee, the International Trade Committee, the Justice Committee, the Northern Ireland Affairs Committee and the Treasury Committee.

Overview

1.1 On 15 May 2020, the European Commission published a [proposal](#) to amend the Withdrawal Agreement governing the UK's exit from the European Union, which it said would address a number of "errors and omissions" in the treaty. They included, notably, certain adjustments to the number and scope of EU laws on goods that will continue to be applicable in Northern Ireland beyond the end of the post-Brexit transition period under a Protocol to the Agreement, as well as technical changes to the financial settlement between the UK and the EU, and the application of certain social security measures under the "Citizens' Rights" section of the treaty.

¹ [Proposal for a COUNCIL DECISION establishing the position to be adopted on behalf of the European Union in the Joint Committee established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community as regards the adoption of a decision to amend the Agreement; COM\(2020\) 195; Legal base: Articles 50\(2\) and 218\(9\) TFEU; QMV; Department: Cabinet Office; Devolved Administrations: consulted; ESC number: 41259.](#)

1.2 On 12 June, the Government agreed to some of the EU’s proposed amendments at a meeting of the UK-EU Joint Committee, with the notable exception of those relating to the Protocol on Ireland/Northern Ireland. It is unclear whether the UK has rejected those remaining amendments definitively, or whether it will continue to discuss them with the EU in advance of the next meeting of the Joint Committee in September 2020. In any event, Ministers failed to inform Parliament beforehand of their position on the proposed changes to the Agreement and which, if any, they intended to support. While the Cabinet Office had submitted an [Explanatory Memorandum](#) to us on the EU’s position on 3 June, and laid a Written Statement some days later,² these provided neither clarity about the implications for the UK (and Northern Ireland in particular) of accepting or rejecting the EU’s proposals, nor confirmed the Government’s intentions when they were to be put to the Joint Committee for approval on 12 June.

1.3 In light of this, we have asked the Government to clarify, as a matter of urgency, its position on the amendments to the Protocol put forward by the EU but which the UK did not approve at the Joint Committee on 12 June. We are also seeking specific commitments from Ministers about a dedicated mechanism for parliamentary scrutiny of future activities of the Joint Committee, given Ministers’ lack of engagement with Parliament ahead of this latest meeting. We consider this especially important given that Committee is due to take a number of further formal Decisions in the near future about the implementation of EU customs, VAT and regulatory requirements in Northern Ireland under the Protocol, for which advance parliamentary scrutiny is essential. A copy of our letter to that effect is shown in the Annex to this Report.

1.4 Further context to and analysis of the Joint Committee’s Decision of 12 June 2020, and the Government’s handling of parliamentary scrutiny of that Decision, is provided below.

Background: the Withdrawal Agreement and the UK-EU Joint Committee

1.5 The UK left the European Union on 31 January 2020, having agreed the terms of its departure with the EU by means of a formal Withdrawal Agreement. This treaty is given effect in UK domestic law by means of the [European Union \(Withdrawal Agreement\) Act 2020](#) (“the 2020 Act”).

1.6 Article 164 of the Withdrawal Agreement allocates the responsibility for its proper “implementation and application” to a UK-EU Joint Committee.³ Among a range of other tasks, that Committee can take legally binding decisions that amend or implement the treaty where explicitly authorised to do so. Article 164(5)(d) empowers the Committee to “adopt amendments to [the] Agreement” if considered necessary to “correct errors, to address omissions or other deficiencies, or to address situations unforeseen” (provided that such changes do not alter the treaty’s “essential elements”).⁴ Any formal decisions taken by the Committee, including approval of any such amendments, must be taken

2 [Written Ministerial Statement HCWS270](#), 8 June 2020. This essentially just set out the agenda for the meeting of the Joint Committee on 12 June 2020, with information on the draft Decision to amend the Withdrawal Agreement listed as a bullet point without further explanation or clarification.

3 On this Committee, the UK must be represented by the Chancellor of the Duchy of Lancaster (Rt Hon. Michael Gove MP), whereas the EU is represented by the European Commission.

4 The provision authorizing amendments under Article 164(5)(d) of the Withdrawal Agreement expires four years after the end of the post-Brexit transition period.

“by mutual consent” and therefore require the agreement of both the UK and the EU.⁵ The Joint Committee is also assisted by six “Specialised Committees”, which provide a forum for discussions between the UK and the EU on specific elements of the Withdrawal Agreement (including, in particular, one dealing with the implementation of the Protocol on Ireland/Northern Ireland).⁶

1.7 Given their important role and powers, the Government has accepted that there is a need for Parliament to be able to hold it to account for the activities and output of these UK-EU Committees.

1.8 For example, while the Withdrawal Agreement allows for adoption of Joint Committee Decisions by written procedure, the 2020 Act specifically prohibits Ministers from agreeing to such acts other than during actual meetings of the Committee (which, in the current circumstances, take place via video-link).⁷ This, the Government itself [argued](#), would “ensure there is full ministerial accountability, including to Parliament, for all decisions made in the Joint Committee”.⁸ More recently, the Chancellor of the Duchy of Lancaster (Rt Hon. Michael Gove MP) [said](#) that the Government “will do everything [it] can to update the Commons and allow it to interrogate the approach that we and the EU are taking” in the Joint and Specialised Committees, including by “mak[ing] sure that Parliament finds out first [about the work of the Committees] and has the chance to question Ministers” (our emphasis).⁹

1.9 However, this laudable commitment is not yet a practical reality. In particular, the Government has so far declined to implement a request made by eight Select Committees in March 2020, which asked for a formal Ministerial Statement clarifying the UK’s position prior to the adoption of any Decisions by the Joint Committee.¹⁰ We are therefore severely constrained in our ability to scrutinise the Government’s actions effectively, as we describe below.

5 Article 166 of the Withdrawal Agreement states: “The Joint Committee shall, for the purposes of this Agreement, have the power to adopt decisions in respect of all matters for which this Agreement so provides and to make appropriate recommendations to the Union and the United Kingdom. [...] The decisions adopted by the Joint Committee shall be binding on the Union and the United Kingdom, and the Union and the United Kingdom shall implement those decisions. They shall have the same legal effect as this Agreement. [...] The Joint Committee shall adopt its decisions and make its recommendations by mutual consent”.

6 Under Article 165 of the Withdrawal Agreement, the six Specialised Committees of the Joint Committee deal with citizens’ rights; other separation provisions (such as resolution of VAT and customs procedures initiated before the end of the transition period); the Protocol on Ireland/Northern Ireland; the Protocol on Gibraltar; the Protocol on the Sovereign Base Areas in Cyprus; and on financial provisions.

7 Section 35 of the European Union (Withdrawal Agreement) Act 2020.

8 Department for Exiting the EU, “[European Union \(Withdrawal Agreement\) Bill: Explanatory Notes](#)” (19 December 2019), para. 326.

9 House of Lords Select Committee on the European Union: Uncorrected oral evidence by the Rt Hon. Michael Gove MP on “[Progress of UK-EU future relationship negotiations](#)” (5 May 2020), Q11.

10 Letter of 18 March 2020 to the Rt Hon. Michael Gove MP.

The EU's proposals to amend the Withdrawal Agreement

1.10 On 15 May 2020, the European Commission [published a proposal](#) for the first amendments to the Withdrawal Agreement since it entered into force, for which it hoped to secure the UK Government's formal agreement at a meeting of the Joint Committee on 12 June.¹¹

1.11 The Commission's proposals, adopted on 10 June by means of a formal [Decision of the Council of the EU](#),¹² are based on the aforementioned powers given to the Joint Committee to "correct errors, to address omissions or other deficiencies" in the Agreement. The draft amendments concerned the financial settlement, the "Protocol on Ireland and Northern Ireland" (which aims to avoid the need for any regulatory and customs infrastructure along the land border on the island of Ireland by requiring certain EU laws relating to goods to continue applying in Northern Ireland), and the coordination of social security rules applicable to EU and UK nationals covered by the Agreement.

1.12 As noted, amendments to the Agreement under Article 164(5)(d) only take effect with the UK Government's agreement. Although the Minister for the Cabinet Office (Rt Hon. Michael Gove MP) submitted an [Explanatory Memorandum](#) on the EU's proposals on 3 June 2020 as part of the regular parliamentary scrutiny process of EU documents, this did not provide any meaningful analysis of the potential implications of the proposed changes for the UK, or clarify the position of the Government on the individual amendments put forward by the EU (see below). Indeed, the Memorandum went so far as to state the proposals had no policy implications for the UK because they were only the "EU position".¹³ We did not receive any further substantive updates from the Cabinet Office about the UK's position in advance of the meeting of the Joint Committee on 12 June.¹⁴

1.13 Following that meeting, the Government announced that it had agreed to "amend ten minor errors and omissions in the Withdrawal Agreement, related to citizens' rights and financial provisions, [as] required for legal certainty". The text of the formal Decision of the Joint Committee has not yet been published as of 18 June, but this appears to mean that, while the Government consented to the technical changes to the financial settlement and social security provision of the Agreement, the EU did not secure the UK's approval on any of the 11 draft amendments to the Protocol on Ireland/Northern Ireland. However, the Government has not made clear whether it has definitively rejected those proposed changes, or whether Ministers will continue to discuss them with the EU.

1.14 In light of this, we are seeking further information from the Government about its position on the suggested adjustments to the Protocol. The following section describes the

11 The need to fix these "omissions" after the WA had already been ratified flowed from the decision, made by the Prime Minister during the renegotiation of the draft treaty in autumn 2019, to focus solely on those aspects of the Agreement negotiated by his predecessor which the new Government could not accept—primarily, the joint UK-EU customs territory—and leave every other element of the draft agreement unchanged. That included, evidently, even the Annexes to the Protocol on Ireland/Northern Ireland, which are critical to its operation.

12 [Council Decision 2020/769 of 10 June 2020](#).

13 More specifically, the Explanatory Memorandum stated that "the UK will formulate its own position in relation to the proposed amendments" (with just over a week left until the Joint Committee meeting at that point) and stated that the draft amendments to the treaty had "no financial implications for the UK" and "no direct impact on UK law" because they were only the "EU position".

14 As noted, the [Written Ministerial Statement of 8 June 2020](#) essentially just informed Parliament of the agenda of the Joint Committee meeting.

full range of changes as originally proposed by the EU in more detail, and where relevant refers to the information—or lack thereof—provided by the Minister to date about the policy implications of the different amendments for the UK.

The Joint Committee Decision of 12 June 2020: amendments to the financial settlement and social security provisions of the Withdrawal Agreement

Technical amendments to the financial settlement

1.15 The bulk of the amendments to the Withdrawal Agreement which the Government approved on 12 June related to the financial settlement between the EU and the UK. This sets out the UK's financial obligations to the European Union and vice versa arising from the UK's membership between 1973 and 2020, in particular in relation to EU spending commitments made from the Union's long-term budget for the 2014–2020 period (which the UK approved in 2013).¹⁵

1.16 The changes agreed between the EU and the UK are technical in nature, and do not alter what the UK is due to pay to the European Union under the settlement. Instead, their principal aim is to adjust certain dates and deadlines contained in the financial provisions of the Withdrawal Agreement to reflect the fact the UK left the EU on 31 January 2020, and not 29 March 2019 as originally envisaged. The Commission has also proposed to address an inadvertent oversight to ensure that the UK can continue to be awarded funding from the EU's "Research Fund for Coal and Steel" (RFCS) until the end of the transition period on 31 December 2020.¹⁶ As this Fund's annual budget is around €40 million (£35.6 million) for projects across the EU, this will have no significant impact on the net size of the financial settlement.¹⁷

Amendments to the social security coordination rules for UK and EU nationals

1.17 Secondly, the EU proposed a further minor technical amendment to the provisions of the Withdrawal Agreement relating to the coordination of social security rules for UK and EU nationals covered by the "Citizens' Rights" section of the treaty. The Government also agreed to this change at the Joint Committee meeting of 12 June.

1.18 In essence, EU and UK nationals who have exercised their free movement rights before the end of the transition period between the UK and one of the remaining 27 EU Member States will remain subject to the EU's complex set of rules on which country is responsible

15 On 11 March 2020, the Office for Budget Responsibility [estimated](#) the settlement would represent a net cost to the British taxpayer of £32.9 billion albeit spread over more than forty years. We understand the Treasury is due to publish its own forecast of the cost of the Brexit financial settlement as part of its annual EU Finances Statement for 2020, due in the coming weeks.

16 The RFCS is funded from the liquidation of the assets of the former European Coal & Steel Community, but the drafters of the Agreement had overlooked that, legally, the Fund is not part of the EU's long-term budget for the 2014–2020 period (from which the UK remains eligible to be awarded funding until the end of 2020 under Articles 137 and 138 of the Withdrawal Agreement, even if this is only paid out until 2021 or later). Instead, the RFCS is governed by [Protocol 37 to the EU Treaty](#). As such, without the proposed amendment, there are "no provisions foreseen for such on-going grants awarded to United Kingdom's beneficiaries by the end of the transition period".

17 According to a Report published by the European Commission in February 2020, from 2011 to 2017 there were British participants in 43 RFCS-funded projects relating to coal and in 96 projects relating to steel.

for paying for benefits such as Jobseeker’s Allowance or the State pension.¹⁸ The practical implementation of that system is governed by the work of the EU’s “Administrative Commission for the Coordination of Social Security Systems”. The EU’s proposal will see two technical decisions made by that Commission added to the Withdrawal Agreement, relating to “[family benefits](#)”¹⁹ and [the exchange of personal data](#) between the national authorities.²⁰ Both were approved by the Administrative Commission prior to the UK’s withdrawal, but by oversight not listed in the Agreement.²¹

1.19 A broader revision of the EU’s Social Security Coordination Regulations has been underway since December 2016, which may also impact on individual British and EU nationals under the terms of the Withdrawal Agreement. We continue to consider relevant developments for the UK with respect to that legislative process separately.²²

The EU’s proposed amendments to the Protocol on Ireland/Northern Ireland

1.20 The third element of the EU’s proposal of 15 May 2020 to amend the Withdrawal Agreement, but which the Government did not agree to at the Joint Committee meeting on 12 June, related to the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement.

1.21 This Protocol was, the result of protracted negotiations, with the aim of ensuring that the UK’s departure from the EU’s Single Market and Customs Union at the end of the post-Brexit transition period would not result in the need for new regulatory or customs infrastructure on the land border on the island of Ireland.²³ One of its key features is that it requires Northern Ireland (technically, the UK Government in respect of Northern Ireland) to continue applying, among other things, a number of EU laws, listed in Annex 2 to the Protocol, relating to the production of and trade in goods, beyond the end of the transition subject to periodic consent by the members of the devolved Assembly in Belfast.²⁴

18 These provisions cover both UK and EU nationals within the scope of the Withdrawal Agreement.

19 “Family benefits” for this purpose include, for example, Child Benefit and Child Tax Credits in the UK. See [Decision F3](#) concerning the interpretation of Article 68 of Regulation (EC) No 883/2004 relating to the method for the calculation of the differential supplement.

20 See [Decision E7](#) concerning practical arrangements for cooperation and data exchange until the Electronic Exchange of Social Security Information (EESSI) is fully implemented in Member States.

21 The Administrative Commission is composed of representatives of the EU Member States, and makes decisions by qualified majority (see Article 71 of Regulation 883/2004). The UK Government was therefore still represented on the Commission when these two decisions were taken. The Withdrawal Agreement, in Article 36(4), requires in any event that the Joint Committee “shall” (i.e. must) amend the relevant sections of the Agreement to “reflect any new Decision or Recommendation adopted by the Administrative Commission” after the end of the transition period. The UK will therefore be required to apply any such Decisions to UK and EU nationals in scope of the Citizens’ Rights provisions of the Withdrawal Agreement.

22 See for example our predecessors’ [Report of 3 April 2019](#). Negotiations on the revision of the Social Security Coordination Regulations have been mostly in limbo since spring 2019, but may recommence this year. As noted, the Committee continues to monitor for relevant developments.

23 Physical customs and regulatory infrastructure was initially rendered obsolete between EU Member States, and therefore also between the UK and Ireland, as a result of the Single Market, through a combination of regulatory harmonisation, systematic exchange of information and oversight by independent EU bodies like the European Commission and Court of Justice.

24 The relevant provisions of the Protocol will take effect for an initial four-year period from the end of the transition period, after which they will be the subject of a vote in Northern Ireland as set out in the UK Government’s “[Unilateral Declaration on Consent](#)”. Under Article 18 of the Protocol, such a vote must subsequently be held every four or eight years.

1.22 On 16 April 2020, press reports²⁵ indicated that the UK-EU Specialised Committee on the Protocol on Ireland/Northern Ireland, one of the six sub-committees of the Joint Committee, was due to discuss “preparatory work on the Joint Committee’s decision on the correction of errors and omissions” in the Protocol at its first meeting on 30 April.²⁶ As of 18 June, no summary²⁷ of the minutes of that meeting has been made public, and neither the [European Commission](#) nor the [UK Government](#) referred to the proposed corrections in their statements after the event published on 30 April. It was therefore only when the European Commission [published](#) the full text of its proposed amendments to the Withdrawal Agreement on the basis of Article 164(5)(d), that it became clear that the EU was seeking to amend the Annex listing the EU rules that will continue to apply in Northern Ireland under the Protocol, requesting:

- the addition of “eight [EU legal] acts” which the Commission considered “essential for the application of the rules of the internal market for goods to Northern Ireland”, but which had “by oversight not been listed” in Annex 2 in the original Withdrawal Agreement. These acts relate to issues as varied as plant seeds, import of cultural goods and monitoring of components used to produce narcotics; and
- the insertion of three “explanatory notes [...] to further define the scope of application of certain specific [EU] acts listed in Annex 2” concerning the application of EU trade defence measures in and to Northern Ireland.

1.23 As noted, at the meeting of the Joint Committee on 12 June, the UK Government did not accept any of these 11 proposed changes to the Withdrawal Agreement. It is not clear if the Government has definitively rejected them, or will continue to discuss them with the EU ahead of the next Joint Committee meeting in September 2020.

Proposed addition of new EU legal acts to Annex 2 of the Protocol

1.24 The table below provides an overview of the eight pieces of EU legislation the EU proposed to add to the Protocol.

1.25 As we alluded to above, in his Explanatory Memorandum on the EU’s proposed changes to the Protocol the Minister did not provide any substantive analysis of the specific implications for Northern Ireland or the UK as a whole if it approved the amendments (or, indeed, if it did not). Stating that there was “no direct impact on UK law” because the suggested changes were only the “EU position”, he instead limited himself to a factual description of the general public policy purpose of the eight pieces of EU legislation. It is a welcome development, therefore, that the Government did not grant approval for any of these proposed amendments to the Protocol at the Joint Committee of 12 June, providing more time for parliamentary scrutiny of their potential implications.

25 [Tweet](#) by Jennifer Rankin, Europe correspondent for The Guardian (16 April 2020).

26 Draft agendas for the Specialised Committees of the Joint Committee have not to date been made public by either the UK Government or the EU, nor shared on a confidential basis by the UK Government with Parliament.

27 Under Rule 8 of the Rules of Procedure for the Joint Committee and its Specialised Committees, set out in Annex VIII to the Withdrawal Agreement, the UK and EU should normally agree on a confidential set of minutes of each meeting by 28 days after the meeting ends (but it can take longer). The same Rule also provides that “a summary of the minutes” is to be prepared, which “may” be made public by mutual consent of the UK and EU. There is no legal deadline for the publication of that summary.

No.	EU legislation proposed for addition to the Protocol	Description
1	Directive (EU) 2019/904 on the reduction of the impact of certain plastic products on the environment (the Single Use Plastics Directive)	This EU Directive, which is due to be implemented by July 2021, aims to promote use of re-usable plastics over single-use plastics.
2	Directive 2011/91/EU on indications or marks identifying the lot to which a foodstuff belongs	This Directive sets general rules for a common lot identification system for foodstuffs, which is used for example to withdraw unsafe products from the market.
3	Council Directive 66/401/EEC of 14 June 1966 on the marketing of fodder plant seed	This Directive sets out rules concerning the marketing of seed for fodder plant within the EU.
4	Council Directive 98/56/EC of 20 July 1998 on the marketing of propagating material of ornamental plants	This Directive sets minimum standards throughout the EU Single Market for the sale of propagating material of ornamental plants.
5	Council Directive 2008/72/EC on the marketing of vegetable propagating and planting material, other than seed	This Directive governs the sale of vegetable propagating and planting material in the EU.
6	Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Union and third countries in drug precursors	This Regulation implements the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. It governs the import and export of substances frequently used in the illicit manufacture of narcotic drugs, and also establishes a system to monitor trade between the EU and third countries in such “drug precursors”.
7	Regulation 2019/880 of the European Parliament and of the Council on the introduction and the import of cultural goods	From 2025, this Regulation will introduce new customs formalities for the import of certain “cultural goods”—like archaeological items—into the EU, requiring the importer to provide guarantees that the goods were removed lawfully from their country of origin.
8	Regulation (EU) 2019/287 implementing bilateral safeguard clauses and other mechanisms allowing for the temporary withdrawal of preferences in certain trade agreements concluded between the European Union and third countries	This Regulation governs the activation of the safeguard mechanisms the EU has negotiated in its trade agreements with certain non-EU countries (Singapore, Japan and Vietnam). Such safeguards allow for the temporary withdrawal of tariff preferences or other preferential treatment contained in those agreements in certain circumstances.

Proposed Explanatory Notes on the application of EU trade defence measures in Northern Ireland

1.26 In addition, the EU also proposed adding three new explanatory notes into the Protocol on Ireland/Northern Ireland to clarify how some of the EU rules already listed—

concerning the application of the EU’s trade defence and safeguard mechanisms when imported goods are causing difficulties for EU-based producers—should be applied in Northern Ireland. Our understanding of the effect of these additional explanatory notes is that the Northern Ireland market and the specific interests of Northern Ireland producers would not be taken into account in determining whether and how the EU should respond to unfair trading practices.

1.27 At first glance, these ‘clarifications’ would appear to disadvantage Northern Ireland producers when faced with dumped or subsidised imports, compared to their competitors elsewhere in the EU’s Single Market for goods. The Government, similarly, did not accept these insertions into the Protocol at the Joint Committee meeting of 12 June but it has not been clear about the policy implications if it were to do so in the future. The Minister’s Memorandum of 3 June did not provide any summary of the practical implications of the EU’s suggested changes, instead restating only that the Commission’s aim is to “clarify the scope of [the] regulations” as they apply under the Protocol.

Conclusions and action

1.28 As is clear from our assessment above, the Government has not lived up to its commitments with respect to transparency of, and accountability for, its actions in the Joint Committee. It did not provide sufficient information—either in its Explanatory Memorandum, or subsequently—about the UK’s position ahead of the Joint Committee on 12 June 2020 to allow us to establish which of the EU’s amendments to the Withdrawal Agreement it intended to approve at that meeting.

1.29 It is to be welcomed in this regard the Government’s decision not to approve any of the EU’s suggested amendments to the Protocol on Ireland/Northern Ireland, given it has not been possible for this, or any other, Committee of the House of Commons to consider the implications of the UK’s acceptance or rejection of those changes. However, it remains the case that the Government could have approved those amendments on 12 June, without notifying Parliament in advance and giving it the opportunity to conduct such scrutiny. The lack of information the Government was willing to provide in advance of the Joint Committee meeting also effectively precluded any meaningful parliamentary scrutiny of the implications of the amendments to the Agreement put forward by the EU, especially so for the proposed changes to the Protocol.²⁸

1.30 It means the Committee is now in a position where it has to pursue the policy implications of a number of proposed changes to the Protocol with the Minister after the meeting at which he was asked whether the UK could agree to them (and could have done so). It is necessary to establish the Government’s position on the EU’s draft amendments to the Protocol, which it is likely to put forward again at a future meeting of the Joint Committee. We are therefore seeking a point-by-point clarification of the Government’s position on each of the EU’s suggested changes to the Protocol.

28 In relation to the proposed amendments to the financial settlement and social security coordination rules, the Government was more open about the implications of the EU’s proposals, but again failed to state explicitly whether it intended to vote in favour of them in the Joint Committee (although it hinted that it might [and, as it transpired, did so]). The Explanatory Memorandum refers to all the EU’s proposals for changes to the financial settlement as “technical”. Similarly, the section of the Explanatory Memorandum on the social security provision states that the changes would ensure “the current list is accurate and complete as both decisions were adopted before the [Withdrawal Agreement] entered into force”.

1.31 Furthermore, the Government’s lack of transparency of the meeting of the Joint Committee on 12 June so far has also clearly demonstrated the need for further discussions on how Parliament is kept informed of the Government’s preparations for, and actions taken during, meetings of that Committee and its preparatory bodies. In particular, we do not consider it tenable for the Government to continue to refuse to provide prior transparency about draft decisions put to the Joint Committee (and the Government’s position thereon), as requested by a number of Select Committees in March this year. In particular, we were only made aware of any of the changes proposed to the Withdrawal Agreement because they were within the scope of our existing system of scrutiny of EU documents. There is no specific mechanism for parliamentary oversight of the implementation of the Withdrawal Agreement and the work of the Joint Committee.²⁹ As a result, we had more clarity about the EU’s position than our Government’s own.

1.32 We therefore reiterate the need for robust commitments from the Government on how it intends to “update the Commons and allow it to interrogate the approach that we and the EU are taking” in practice, not least given the many important decisions of the Joint Committee is due to take in the coming months (including, in particular, on the detailed implementation of the Protocol on Ireland/Northern Ireland). In particular the Government should, as a matter of course, inform Parliament in advance of any meetings at which the Joint Committee may be asked to take a decision or issue a recommendation, allowing for sufficient time for parliamentary scrutiny. This should be accompanied by an assessment of the substance and implications of those acts, which also indicates whether the Government intends to agree to their adoption.

1.33 A copy of our letter to the Minister for the Cabinet Office, reflecting our concerns and questions, is shown in the Annex to this Report. We also draw our assessment to the attention of the Committees which wrote to the Minister for the Cabinet Office in March 2020 as regards transparency of the Joint Committee, in particular the Committee on the Future Relationship with the EU and the Northern Ireland Affairs Committee.³⁰

Letter from Sir William Cash to the Chancellor of the Duchy of Lancaster on the UK-EU Joint Committee

Transparency of the UK-EU Joint Committee

The Committee today considered the outcome of the UK-EU Joint Committee meeting of 12 June, taking into account your Explanatory Memorandum of 3 June on the various amendments put forward by the EU to correct “errors and omissions” in the Withdrawal Agreement and the Protocol on Ireland / Northern Ireland.³¹ In particular, we took note of the Government’s approval for a Decision by the Joint Committee to accept some of the EU’s proposed changes to that Agreement with respect to the financial settlement and the social security provisions, but withholding its consent, at least for the time being, from any changes to the Protocol.

29 More specifically, for at least the duration of the post-Brexit transition period, we continue to assess the legal and political importance of draft EU legislation for the UK (which includes proposals for Council Decisions establishing the EU’s position in international bodies, such as the UK-EU Joint Committee). Consequently, the Government—in this case the Cabinet Office—was required to produce an Explanatory Memorandum after the European Commission published its proposal for amendments to the Withdrawal Agreement.

30 The other Committees whose attention we draw to this Report are the Foreign Affairs Committee, Home Affairs Committee, the International Trade Committee, the Justice Committee and the Treasury Committee.

31 [Council Decision 2020/769 of 10 June 2020](#); deposited in Parliament as document COM(2020) 195.

As you will be aware from our letter of 11 June, the Committee is disappointed with the Government's handling of this matter with respect to both substance and process. Your stated commitment to the House of Lords EU Committee that Ministers would "do everything [they] can to update the Commons and allow it to interrogate the approach that we and the EU are taking" has not been borne out in practice because the Government has, so far, failed to provide the information necessary for Parliament to scrutinise effectively the work of the Joint Committee and the UK position taken at its meetings.

In particular, we were only aware of the changes to the Withdrawal Agreement to be discussed at the Joint Committee on 12 June because the European Commission's proposals had to be submitted under our existing procedures for scrutiny of European Union documents. These procedures do not extend to the formal decision-making powers of the Joint Committee, and do not take into account the UK Government's role in determining its agenda. Your Explanatory Memorandum to Parliament failed to clarify the potential policy implications of the EU's proposals relating to the Protocol for the UK, and the Government's position on them.

As a result, we had no formal confirmation that the Government would not accept the changes to the Protocol at last week's Joint Committee meeting until after the fact, despite your commitment that Ministers would endeavour to ensure "that Parliament finds out first" about the Government's intentions in relation to the work of that body (our emphasis).³² We note in this respect that the statutory prohibition on the UK agreeing to the adoption of Decisions by the Joint Committee by written procedure was meant to enhance Ministerial accountability for the Government's actions in that Committee. Clearly this will not be the case if Parliament is only informed of the Government's position on decisions taken by the Joint Committee ex-post, in which case it is immaterial by which manner they were approved.

Turning to the substance of the Joint Committee Decision of 12 June, it is clear from your Memorandum that the Government considered the EU's proposals to adjust the financial settlement and social security rules in the Withdrawal Agreement to be technical in nature. Nevertheless, Parliament should have the opportunity to examine whether acts of the Joint Committee are indeed purely technical or whether they may have wider legal, policy or financial implications before they are agreed to by the Government.

More important still, as regards the draft amendments to the Protocol on Ireland/Northern Ireland, we are still waiting for the Government's assessment of their implications for the UK. We do not know if Ministers have definitively rejected those amendments, or will continue to discuss them with the EU ahead of a future meeting of the Joint Committee. We note in this regard that even a rejection of those EU proposals could have policy implications, for example if the absence of a particular EU act in the Protocol could affect the coherence or functioning of the relevant regulatory framework in Northern Ireland.

Overall, it is clear that the effective parliamentary scrutiny of the Government's preparations for, and actions in, the Joint Committee will require a substantial change in your approach to transparency, to ensure proper accountability of Ministers for their position within those bodies.

32 House of Lords Select Committee on the European Union: Uncorrected oral evidence by the Rt Hon. Michael Gove MP on "[Progress of UK-EU future relationship negotiations](#)" (5 May 2020), Q11.

In light of the above, we have a number of questions in relation to the implications of the EU's draft amendments to the Protocol on Ireland/Northern Ireland. In addition, we are reiterating our request for a number of practical commitments from the Government to improve parliamentary scrutiny of the work of the UK-EU Joint Committee in the future, given the many important decisions that body is yet to take in the coming months in relation to the practical implementation of the Protocol on Ireland/Northern Ireland in particular.

1. *The EU's proposed amendments to the Protocol on Ireland/Northern Ireland*

In relation to the EU's proposed amendments to the Protocol on Ireland/Northern Ireland, we ask you to:

- explain for each individual proposed addition of EU legislation whether the Government agrees that its addition is “essential for the application of the rules of the Internal Market for goods to Northern Ireland” as the EU claims, and what the implications of accepting or rejecting those additions would be for the UK, and for Northern Ireland in particular;
- set out the practical implications of the proposed “explanatory notes” on the application of the EU's trade defence measures under the Protocol on Ireland/Northern Ireland, in particular for Northern Irish producers affected by unfairly dumped or subsidised imports;
- clarify whether it has definitively rejected the EU's request for these adjustments to the Protocol, or whether the Government will continue to discuss them with the EU; and
- clarify whether the EU has informed the Government of any further omissions or errors it is intended to propose to address by means of a future Decision of the Joint Committee, or indeed if the Government itself intends to do so.

2. *Arrangements for scrutiny of future Joint Committee activities*

In our view, the Government's approach to transparency of the activities of the UK-EU Joint Committee of 12 June, as evident from the above, also demonstrates the need for an effective mechanism for parliamentary scrutiny of the position taken by the Government within that Committee.

It is an anomaly that Parliament has to use its general scrutiny procedures for EU affairs—whose long-term future beyond the end of the transition period is uncertain—to hold the Government to account for the activities and output of the Joint Committee. After all, Decisions by that Committee can be taken long beyond the end of transition and have the same legal effect as the Withdrawal Agreement and therefore merit particular scrutiny. More specifically, we should not have to rely on the EU's publication of its own position for meetings of the Joint Committee for Parliament to be aware of the nature of specific Decisions or Recommendations that Committee is being asked to consider.

It is therefore clear that the requests made by ourselves and seven other Select Committees in March 2020 for advance publication by the Government of draft Decisions of the

Joint Committee, including its position thereon, remains a necessary, appropriate and proportionate mechanism to ensure proper accountability of the actions of the UK Ministers in the Joint Committee.

We have asked for a number of commitments in that respect, set out at the end of this letter. We hope our requests will form the basis for constructive discussions between our staff and your officials on the necessary practical arrangements to ensure Parliament can scrutinise the policy, legal and financial implications of the work of the Joint Committee appropriately and effectively.

3. *Transparency of activities of the Specialised Committees*

We also want to highlight the lack of Government transparency of the work of the Joint Committee—and its Specialised Committees—which do not relate to formal Decisions or Recommendations.

In particular, it has already become clear that the Specialised Committees are rapidly becoming a key forum for exchange of views on the implementation of the Withdrawal Agreement, including in relation to potential disagreements between the UK and the EU about the interpretation of the Agreement, or as preparatory work for future Decisions of the Joint Committee. However, the Government has, without any clear justification, drawn a veil of secrecy over their activities which in turn also hampers Parliament's ability to effectively scrutinise their work, and their input into the work of the Joint Committee itself.

For example, the EU's intention to propose amendments to the Protocol on Ireland/Northern Ireland was already communicated to the Government at the meeting of the Specialised Committee on the Protocol, which took place on 30 April 2020. However, no further details were shared with Parliament until the Commission formally published its proposals in mid-May, and even 6 weeks later, no summary of the minutes of that Specialised Committee meeting has been published (despite the option to do so under the Withdrawal Agreement). Similarly, it first became clear through press reports that the Government used the Specialised Committee on Financial Provisions on 19 May 2020 to challenge the EU's assertion that the UK needs to contribute over €200 million (£180 million) more than anticipated to the EU's 2020 budget under the financial settlement in the context of the coronavirus crisis. The Treasury only confirmed this to us on 9 June, even though we in fact requested clarity on this before the Specialised Committee had even met, on 7 May.³³

Our requests in this regard are also set out at the end of this letter. In particular, given the importance of the Specialised Committees, Parliament should be given access to their agendas. The Government has provided no justification for not doing so to date, and we understand they are in fact shared with the European Parliament by the European Commission. The Cabinet Office should make a similar arrangement with Parliament without delay.

33 [Letter](#) from Sir William Cash, Chair of the European Scrutiny Committee to Rt Hon. Steve Barclay, Chief Secretary to the Treasury (7 May 2020).

4. Requests for commitments in relation to parliamentary scrutiny of the Joint Committee

Building on your previous correspondence with a number of Select Committee Chairs, and in light of the lack of transparency in advance of the Joint Committee's Decision of 12 June, we are seeking the following commitments from the Government on transparency of the Joint Committee and its Specialised Committees:

- The Government should inform Parliament of all proposals for Decisions and Recommendations to be taken by the Joint Committee to Parliament, accompanied by a statement of the Government's assessment of their implications and its overall position. These submissions should take place with sufficient time to allow for effective scrutiny by interested Committees, and in any event—where applicable—no later than the point where the Specialised Committees submit proposals for Decision or Recommendations to the Joint Committee.
- Given that the UK Government's agreement is necessary for the adoption of the agenda for each Joint Committee meeting, Ministers can insist on a delay in deciding on draft Decisions or Recommendations to allow for Parliament to consider those acts prior to their adoption. Except where time-sensitive, the Government should in principle seek to defer the timing for adoption of such acts of the Joint Committee to facilitate parliamentary scrutiny. If the Government approves an act of the Joint Committee before such parliamentary scrutiny can be completed, the Government should have to justify why this was considered necessary by means of a Written Statement.
- Parliament should be given access to the agendas of the Specialised Committee without delay, given they are already shared by the European Commission with the European Parliament.
- With respect to the transparency of the Joint Committee and Specialised Committee more generally, the Government should share meeting schedules and summaries of the minutes for the Joint Committee, the Specialised Committees and the Joint Consultative Working Group on Northern Ireland with Parliament.

We ask you to provide the requested information and commitments in writing before the end of June. We also look forward to discussing these issues with you in person when you give evidence in the near future.

Formal Minutes

Thursday 18 June 2020

After consulting all Members of the Committee, the Chair was satisfied that the Report represented a decision of the majority of the Committee and reported it to the House. (Order of the House of 24 March 2020).

Standing Order and membership

The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents and—

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers—

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee’s powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House’s Standing Orders, which are available at www.parliament.uk.

Current membership

[Sir William Cash MP](#) (*Conservative, Stone*) (Chair)

[Tahir Ali MP](#) (*Labour, Birmingham, Hall Green*)

[Jon Cruddas MP](#) (*Labour, Dagenham and Rainham*)

[Allan Dorans MP](#) (*Scottish National Party, Ayr Carrick and Cumnock*)

[Richard Drax MP](#) (*Conservative, South Dorset*)

[Margaret Ferrier MP](#) (*Scottish National Party, Rutherglen and Hamilton West*)

[Mr Marcus Fysh MP](#) (*Conservative, Yeovil*)

[Mrs Andrea Jenkyns MP](#) (*conservative, Morley and Outwood*)

[Mr David Jones MP](#) (*Conservative, Clwyd West*)

[Stephen Kinnock MP](#) (*Labour, Aberavon*)

[Mr David Lammy MP](#) (*Labour, Tottenham*)

[Marco Longhi MP](#) (*Conservative, Dudley North*)

[Craig Mackinley MP](#) (*Conservative, South Thanet*)

[Ann Marie Morris MP](#) (*Conservative, Newton Abbot*)

[Charlotte Nichols MP](#) (*Labour, Warrington North*)

[Greg Smith MP](#) (*Conservative, Buckingham*)