

**Government response to the Sub-Committee on the Protocol on Ireland/Northern
Ireland's report**
**Scrutiny of EU legislative proposals within the scope of the Protocol on
Ireland/Northern Ireland**

30 May 2022

1. The Government welcomes the Sub-Committee's report of 22 March on Scrutiny of EU legislative proposals within the scope of the Protocol on Ireland/Northern Ireland ("the Protocol"). We are grateful to the Sub-Committee and to those who have provided evidence for the report and have considered the evidence, findings and recommendations carefully.
2. The Government's responses to the issues raised in the Sub-Committee's report are set out below. Responses have been provided to the Committee's conclusions and recommendations, grouping them as appropriate.

Given the socio-economic and political implications of the Protocol for Northern Ireland, in particular in the context of its relationship with the rest of the UK, EU legislation applying to Northern Ireland must be subject to detailed parliamentary scrutiny. Scrutiny of such documents is, and will continue to be, a key priority of the Protocol Sub-Committee's work. (Paragraph 18)

Given the implications for Northern Ireland and its relationship with the UK, we stress the continuing importance of effective scrutiny of EU legislative proposals by Committees in the House of Commons and the Northern Ireland Assembly. In that context we welcome the approach to Assembly scrutiny proposed by its Chairpersons' Liaison Group, which would improve transparency and strengthen the ability of the Assembly to carry out oversight of relevant legislative developments in relation to devolved matters falling within the scope of the Protocol. In that context, we stress in particular the importance of timely provision of necessary information to Assembly Committees, including Explanatory Memoranda, either by the Government or the Northern Ireland Executive. (Paragraph 35)

We will continue to work closely with these Committees, drawing their attention to the findings of our scrutiny work. Given our mutual interest in these issues, we would welcome opportunities for enhanced cooperation in our scrutiny work, and we stress our commitment to continued interparliamentary dialogue in that context. (Paragraph 36)

We also welcome the scrutiny work relevant to the Protocol being undertaken by other Committees of the House, including the Common Frameworks Scrutiny Committee, the International Agreements Committee and the Secondary Legislation Scrutiny Committee. We will continue to work closely with those Committees. In that context, we note that the work of the Common Frameworks Scrutiny Committee will conclude in July 2022 and we hope that rigorous parliamentary scrutiny of the Common Frameworks Programme will be continued in the House of Lords. (Paragraph 37)

The Committee has consistently highlighted in its correspondence with Ministers the importance of engagement with key stakeholders who stand to be affected by EU legislation applying to Northern Ireland under the Protocol. We welcome the feedback that we have received from such stakeholders on a variety of legislative proposals. We will continue to invite such feedback in the months ahead, and to share with the Government the views and concerns put to us. (Paragraph 43)

In Chapter 4, we explore the EU's obligations in relation to the application to Northern Ireland of EU legislation within the scope of the Protocol. In that context, we will seek to enhance our engagement with the EU institutions, including through dialogue with the EU Ambassador to the UK, in relation to our scrutiny of EU legislation applying to Northern Ireland under the Protocol. (Paragraph 46)

3. The Government welcomes the scrutiny work of the Sub-Committee and understands that EU document scrutiny remains a key priority of its work. We also welcome the work relevant to the Protocol of other parliamentary committees listed by the Sub-Committee.
4. In respect of scrutiny by the Northern Ireland Assembly's Committees, the Government will continue to share Explanatory Memoranda (EMs) submitted to the Sub-Committee with Northern Ireland Executive officials to inform the work of the Assembly Committees, and the Government will continue to involve Executive officials in the preparation of EMs provided to the Sub-Committee on EU legislation applying to Northern Ireland before they are submitted.
5. We look forward to the future work of the Sub-Committee, referred to in the Sub-Committee's conclusions.

We note that the Government's stated intention in pursuing the particular form of Brexit it has chosen is to give the opportunity for the UK (in respect of Great Britain) to diverge from EU Single Market rules. Therefore in view of the continued application of EU law as set out in the Annexes to the Protocol on a dynamic basis to Northern Ireland, and the potential implications for Northern Ireland and its relationship with the rest of the UK, we welcome the Government's continuing commitment to deposit in Parliament and submit Explanatory Memoranda on EU proposals which amend or replace existing proposals within the scope of the Protocol on Ireland/Northern Ireland. (Paragraph 51)

Given the potential implications for regulatory divergence between Northern Ireland and the rest of the UK, we also welcome the Government's continuing commitment to consult the Committee on the deposit of Commission Delegated and Implementing Acts (tertiary legislation). The Committee will continue to request deposit of such documents where issues of regulatory divergence arise. (Paragraph 52)

We welcome as far as it goes the Government's commitment to deposit in Parliament new EU legislation within the scope of the Protocol which does not amend or replace EU acts listed in the Annexes to the Protocol. Nevertheless, we urge the Government to go further. (Paragraph 58)

RECOMMENDATION 1. *In particular, any new EU legislation within the scope of the Protocol of which the EU has informed the UK should automatically be deposited in Parliament at that stage, with the Explanatory Memorandum providing, without prejudice to the Government's negotiating position, as much information as possible on the addition of such legislation to the Annexes to the Protocol. (Paragraph 59)*

6. The Government recognises the important role of the Sub-Committee in examining EU legislation that continues to apply to Northern Ireland under the provisions of the Protocol. The Government is pleased that the Sub-Committee welcomes our continuing commitments on depositing and submitting EMs.
7. Post EU-exit the volume of EU law applicable in the UK has dramatically decreased, meaning that revised scrutiny arrangements need to be agreed. Throughout 2021 and 2022, the Government has been in discussion with the European Affairs Committee in the Lords, and European Scrutiny Committee in the Commons to agree a new set of scrutiny arrangements that are proportionate to our new relationship with the EU. These commitments concern the scrutiny of EU legislation that continues to be applicable to the UK under the Withdrawal Agreement (WA), the governance agreements underpinning the implementation of the WA and Trade and Cooperation Agreement (TCA), and the broader EU-UK relationship.
8. As referred to in the Sub-Committee's report, Lord Frost's letter of 23 September (included in Annex A) - which sets out the Government's offer on scrutiny arrangements - includes a commitment to consult with the clerk of the Sub-Committee on whether an EM should be provided when the UK is informed of any draft EU legislation through the Joint Consultative Working Group (JCWG) which the EU has indicated they would like to add to the NIP Annexes under the Article 13(4) processes. These new scrutiny arrangements are not limited to the deposit of EMs, recognising the value the Government places on harnessing the expertise of the Sub-Committee, despite the reduction in relevant legislation. The Government considers these arrangements to be appropriate and proportional and we continue to work with the EU Select Committees to finalise these arrangements.
9. We appreciate the Sub-Committee's understanding that EMs may at times touch upon issues which are part of ongoing negotiations. The Government will seek to provide as much information as possible in EMs without prejudicing its negotiating position.

RECOMMENDATION 2. We invite the Government to set out:

**(1) each piece of new EU legislation within the scope of the Protocol which does not amend or replace EU acts listed in the Annexes to the Protocol of which it has been notified by the EU since the Protocol came into force; and
(2) whether in each case the document was deposited and an EM produced.
(Paragraph 60)**

10. Since the Protocol came into force, the EU has not formally notified the UK within the Joint Committee of the adoption of any 'new' EU legislation within the scope of the Protocol under the process set out in Article 13(4).
11. However, the EU has preliminarily notified the Government of one piece of legislation about which they intend to notify us of in the Joint Committee in future. This is the proposal for a Regulation of the European Parliament and of the Council establishing a Carbon Border Adjustment Mechanism. The Government deposited the proposal for scrutiny on 11 October 2021 and an EM was submitted on 29 October 2021. The EM noted that "at the Joint Consultative Working Group on 15 July 2021, the EU informed the UK that it considers the measure to be new legislation in scope of the Protocol". On this basis, we expect the EU to notify the UK through the Joint Committee at a later stage, in accordance with the process set out in Article 13(4) of the Protocol. That formal notification has yet to be received.
12. Shortly before the Protocol came into force on 31 December 2020, the Withdrawal Agreement Joint Committee (WAJC) took decisions to add eight EU legislative acts, together with three Explanatory Notes, to the Protocol. An EM providing the background and context for each legislative act to be added was submitted for the Sub-Committee's examination, covering the decisions taken by the WAJC at their meeting of 17 December 2020 (EM 13914/20). Separate EMs on each legislative act were not submitted. The legislative acts were:
 - Directive (EU) 2019/904 on the reduction of the impact of certain plastic products on the environment (previously scrutinised as EU proposal 9465/18).
 - Directive 2011/91/EU on indications or marks identifying the lot to which a foodstuff belongs (previously scrutinised as EU proposal 14499/10).
 - Council Directive 66/401/EEC of 14 June 1966 on the marketing of fodder plant seed (no previous scrutiny history of the original proposal).
 - Council Directive 98/56/EC of 20 July 1998 on the marketing of propagating material of ornamental plants (previously scrutinised as EU proposal 5091/07).
 - Council Directive 2008/72/EC of 15 July 2008 on the marketing of vegetable propagating and planting material, other than seed (previously scrutinised as EU proposal 5215/08).
 - Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Union and third countries in drug precursors (previously scrutinised as EU proposal 8399/04).
 - Regulation 2019/880 of the European Parliament and of the Council on the introduction and the import of cultural goods (previously scrutinised as EU proposal 11272/17).

- Regulation (EU) 2019/287 of the European Parliament and of the Council 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 (previously scrutinised as EU proposal 8141/18).

RECOMMENDATION 3. *In view of the importance of Article 2 of the Protocol, we invite the Government to confirm that it will deposit in Parliament and provide Explanatory Memoranda on draft EU proposals which amend or replace the Directives listed in Annex 1 to the Protocol, as well as other EU legislation relevant to the provisions of Article 2. (Paragraph 65)*

RECOMMENDATION 4. *We also invite the Government to set out how it intends to ensure that the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission, as well as Committees in Westminster and the Northern Ireland Assembly, are kept informed of wider developments in EU law relevant to Article 2. (Paragraph 66)*

13. The Government is firmly committed to Article 2 of the Protocol under which it is required to ensure that the rights, safeguards and equality of opportunity protections set out in the relevant chapter of the Belfast (Good Friday) Agreement, including in the area of protection against discrimination as underpinned by the six relevant EU directives listed in Annex 1, are not diminished as a result of the United Kingdom's withdrawal from the EU.
14. This commitment reflects the UK Government's unwavering commitment to the Belfast (Good Friday) Agreement.
15. The Government's offer on scrutiny, set out in Lord Frost's letter of 23 September 2021, includes a commitment to continue the submission of EMs on EU proposals which amend or replace existing proposals that fall under scope of the Protocol. This includes draft EU proposals which amend or replace the Directives listed in Annex 1 to the Protocol.
16. The Sub-Committee also has the right of initiative to engage the Government with questions on any EU legislation they see as being relevant to the provisions of Article 2, and requests for information will be considered, in full, by the relevant government department.
17. Concerning the Equality Commission for Northern Ireland (ECNI) and the Northern Ireland Human Rights Commission (NIHRC), the Government continues to work closely with both organisations to ensure the processes and structures are embedded appropriately. These processes involve regular meetings between the Northern Ireland Office and officials from the NIHRC and the ECNI, and the NIHRC and ECNI raising issues of concern with the Northern Ireland Office.

18. Further, in relation to the JCWG, the Commissions already have a formal role enshrined in the Protocol in bringing to the attention of the Ireland/Northern Ireland Specialised Committee any matter of relevance to Article 2. There has been contact between the Commissions and the UK Government officials who service the UK's JCWG representatives, and we expect this to continue. This is in line with Article 14(c) of the Protocol, which states that:

The Ireland/Northern Ireland Specialised Committee shall “*consider any matter of relevance to Article 2 of this Protocol brought to its attention by 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*”.

RECOMMENDATION 5. We urge the Government to ensure that any EU legislative proposals not falling within the definition of documents that the Government has committed to deposit, but which nevertheless have significant implications for Northern Ireland in the context of the Protocol, are promptly deposited in Parliament, and that scrutiny Committees are provided with an Explanatory Memorandum as soon as possible. (Paragraph 68)

19. The Government remains committed to ensuring that the EU Select Committees can scrutinise the work of government in the context of our new relationship with the EU and have the necessary information to assess in particular the impact of EU legislative proposals for the people of Northern Ireland.
20. We continue to work with the relevant Select Committees to finalise the scrutiny arrangements on EU legislative proposals within the scope of the Protocol. These arrangements will reflect the UK's new relationship with the EU, as they aim to ensure that the scrutiny process remains relevant and proportionate.
21. The Government acknowledges the interest of the Sub-Committee in considering EU legislative proposals that do not fall within the definition of documents that we have committed to depositing. As per our response to paragraph 65, the EU Select Committees and indeed any other Select Committees have the right of initiative to engage the Government with questions on any EU proposal they see as having significant implications for Northern Ireland in the context of the Protocol, and requests for information will be considered, in full, by the relevant government department.
22. It is worth noting, however, that the EU has no obligation to share information with the UK - under the information sharing provisions of Article 15 of the Protocol - relating to EU acts which are outside the scope of the Protocol. As such, we would be reliant on the EU sharing information on the same basis that it would with any interested third party, and the EU may therefore be reluctant to share anything beyond what is already publicly available on their websites.

RECOMMENDATION 6. *We note that the EU has recently indicated flexibility regarding the confidentiality of the discussions of the Joint Consultative Working Group. In view of this, we once again urge the Government to establish formal mechanisms for prompt communication to Parliament (and to other stakeholders) of information received from the EU in the Joint Consultative Working Group on planned or adopted EU legislation falling within the scope of the Protocol. In that context, we would welcome the opportunity to engage directly with the Joint Consultative Working Group and other UK-EU governance structures regarding the findings of the Committee's scrutiny work. (Paragraph 71)*

23. Article 15 of the Protocol established a JCWG on implementation of the Protocol to 'serve as a forum for the exchange of information and mutual consultation' between the UK and EU. The Rules of Procedure of the JCWG provide that the meetings of the group are confidential. As part of our ongoing discussions with the EU we are continuing to reflect upon this.

24. The Government recognises the importance of transparency about new EU legislative proposals within the scope of the Protocol in facilitating the important work of the EU Select Committees in both Houses. The Government's offer on scrutiny, set out in Lord Frost's letter of September 2021, includes an undertaking to consult the clerks of the relevant Select Committees when the EU proposes new legislation be added to the Protocol annexes. Whilst formal scrutiny arrangements are being finalised, we would be happy to consider sharing information on particular legislative proposals where they are of interest to the Sub-Committee. Some information may need to be shared on a confidential basis. In any event, good relationships exist between officials and the clerks of the Committees and we will continue to provide information through that channel.

Although the quality of some Government EMs and correspondence on EU legislation relevant to Northern Ireland under the Protocol has improved, others have remained variable and, in some cases, frankly poor. Notwithstanding the ongoing discussions with the EU over the future of the Protocol, the Government has an obligation, in the meantime, to set out the full implications of EU legislation applying to Northern Ireland under the Protocol as it currently operates. (Paragraph 78)

RECOMMENDATION 7. *We therefore urge the Government to ensure that EMs and correspondence set out, as a minimum:*

- (1) The views (where these are available) of the Northern Ireland Executive and those of the Scottish and Welsh Governments on each proposal, any concerns that they expressed, and what action has been taken in response.***
- (2) The Government's initial assessment of the merits or otherwise of EU regulatory proposals.***
- (3) Whether the proposals will lead to regulatory divergence between Great Britain and Northern Ireland, and what practical implications this will have, in particular in terms of the movement of goods and products***
 - a) between Great Britain and Northern Ireland, and***
 - b) between Northern Ireland and Great Britain in the context of the Government's statutory commitment to unfettered access for Northern Ireland goods on the UK market.***

- (4) What steps, if any, the Government plans to address such regulatory divergence, for instance through the introduction of equivalent measures in England or Great Britain (according to the extent of the Government's powers of competence in each case), and the timetable for doing so.**
- (5) What factors the Government is taking into account in deciding whether or not to introduce equivalent measures, and its reason for not doing so if it is choosing not to.**
- (6) The impact, if any, of the proposals for Northern Ireland's participation in the UK's Free Trade Agreements.**
- (7) The relevance and impact of the proposals for Northern Ireland's participation in UK Common Frameworks.**
- (8) Whether EU legislation directly applies in Northern Ireland, or whether and how it will be implemented in domestic law.**
- (9) What consultation, either by the Government or the Northern Ireland Executive, has taken place with key stakeholders (such as businesses based in or trading with Northern Ireland) on the impact of the EU legislation, and whether a regulatory impact assessment has been undertaken. (Paragraph 79)**

25. The Government acknowledges that this issue was raised by the Chair of the Sub-Committee in a letter to the Foreign Secretary on 17 January. The Government notes the Sub-Committee's recognition that the quality of some Government EMs and correspondence on EU legislation under the Protocol has improved, and agrees that the information provided in these documents should be of the highest quality so that it supports scrutiny.

26. In August 2021, Lord Frost wrote to Secretaries of State to highlight the quality issues previously raised by the Sub-Committee Chair, and to stress the importance of submitting well-crafted EMs. He asked Departments to ensure that officials in the Cabinet Office's EU Secretariat and the Northern Ireland Protocol Task Force (both now part of the Foreign, Commonwealth and Development Office's EU Directorate) are sighted on draft EMs, and requested that EMs cover the following areas (among others): a sense of the views of the devolved administrations on the proposals, in general terms; information on whether the proposal would apply directly in Northern Ireland; and an assessment of the facts and implications for regulatory divergence, if any, between GB and NI. However, responsibility for producing EMs ultimately lies with the relevant department responsible for each policy area, rather than the FCDO's EU Directorate itself.

27. As part of the Government's scrutiny offer to Committees, it has committed to work with their clerks and Members to review and enhance the format of EMs, and to review the effectiveness of these subsequently. This work can commence immediately upon agreement of the scrutiny arrangements.

We reiterate the conclusion of our introductory report that as a consequence of Brexit, the Protocol, negotiated by the Government and the EU and implemented in the UK via the European Union (Withdrawal Agreement) Act 2020, has created a democratic deficit, in that EU law as set out in the Annexes to the Protocol applies to Northern Ireland on a dynamic basis, subject neither to UK Government participation in the EU institutions, nor to consent from parliamentarians either at Westminster or Stormont. While steps to ensure parliamentary scrutiny of such legislation and to enhance Northern Ireland's voice and influence in relation to their application are necessary, they are not themselves sufficient to resolve the issues to which the democratic deficit gives rise. (Paragraph 88)

We welcome the proposals in the EU's October 2021 non-paper on 'Engagement with Northern Ireland stakeholders and authorities', as far as they go. Yet it needs to do more. We therefore urge the EU to enhance transparency around the application of EU law to Northern Ireland, take account of the impact of EU law on Northern Ireland's particular circumstances, and engage with Northern Ireland businesses, civic society and political institutions at an early stage in order to give them a voice concerning the application and implications of such legislation. (Paragraph 89)

RECOMMENDATION 8. *We endorse the proposal by the House of Commons Northern Ireland Affairs Committee that each proposed EU legal act should include a recital stating whether it engages the UK's obligations under the Protocol, and that accompanying explanatory material should set out the basis on which the European Commission considers that it should apply in Northern Ireland. This material should also explain how the EU has taken into account Northern Ireland's particular circumstances in the application of the legislation in question. (Paragraph 90)*

28. The Government agrees with the Sub-Committee's assessment that the Protocol has created a democratic deficit which needs to be addressed.
29. While it was important to secure the inclusion of the vital democratic consent provisions at Article 18 of the Protocol, meaning that the continued operation of the trade elements of the Protocol is a matter for representatives elected by the people of Northern Ireland, the provisions of Article 18 do not in and of themselves address their concerns. The Government has been taking forward additional discussions with the EU to consider how to improve the involvement of Northern Ireland stakeholders and institutions in the operation of the Protocol and to ensure that they have a meaningful say in the rules that apply.
30. It is important to note that the imposition of EU law in Northern Ireland was not a necessary consequence of the UK's departure from the EU – any more than our departure required dynamic alignment, or the 'backstop'. The imposition of EU law was a consequence of the EU's unwillingness to accept other solutions, and also a reflection of the fact that the TCA had not yet been negotiated (since then, as the Sub-Committee is aware, the EU has accepted lighter-touch solutions on several issues in the context of the TCA, including governance and subsidies/state aid).
31. As noted in Lord Frost's statement of 17 December (included in Annex B), there remains a fundamental issue of democratic accountability which has not been resolved, despite some discussions on these and related issues. We need to see much more ambition from the EU to engage on the changes necessary to give

Northern Ireland institutions and stakeholders a meaningful role in shaping the rules applicable in Northern Ireland. In that context, the Foreign Secretary announced in the House of Commons on 17 May (included in Annex C) plans for legislation aimed at fixing the issues facing communities in Northern Ireland, restoring political stability, and preserving peace.

In the context of the ongoing discussions between the UK and the EU, and as the Preamble to the Protocol acknowledges, all sides have a continuing obligation to ensure that the operation of the Protocol, and the dynamic application to Northern Ireland of EU law listed in the Protocol's Annexes, takes into account the delicate balance between North-South and East-West relations as provided for under the Belfast/Good Friday Agreement, and to demonstrate how it is compliant with that Agreement in all its Strands. (Paragraph 91)

32. The Government agrees that all sides have an obligation to ensure that the operation of the Protocol takes into account the delicate balance between North-South and East-West relations as provided for under the Belfast (Good Friday) Agreement, as the Protocol itself acknowledges. As the Prime Minister noted in his foreword to the July 2021 Command Paper, our proposals are about finding a new balance in the Protocol, given our concern that the delicate balance is not being respected. As recent events have shown, the continued operation of the Protocol has had major consequences for the Belfast (Good Friday) Agreement structures. There have been significant consequences for the structures under Strand 1 (as we have seen with the withdrawal of the First Minister in February, precluding the full operation of the Executive) and under Strand 2 (with the withdrawal of some parties from North-South institutions).
33. The Government wants a fair, proportionate, and durable solution that works for all sides. We are clear that this requires significant changes to the Protocol. There are two unions and two single markets: both must be respected and that is the only route to a sustainable solution. Our solutions are simple and pragmatic: removing all customs processes for goods moving within the UK; enabling the frictionless movement of agri-food goods remaining within the UK; allowing businesses to choose to follow either UK or EU regulations; safeguarding the continuity of supply for medicines in Northern Ireland; fixing the unacceptable situation where people in Northern Ireland can't benefit from the same tax benefits as everyone else in the UK; and removing oversight of UK law by EU courts.
34. This should be achievable and would deliver the stability that businesses and, more importantly, communities in Northern Ireland need. We have always said we would prefer a negotiated settlement and we have been in talks since last July to try to find a way through. However, if there is no movement from the EU we will have no choice but to take action in order to uphold the Belfast (Good Friday) Agreement. Our overriding priority is to get the NI Executive back up and running and we have a short window to do so. Following the elections in Northern Ireland, the Protocol now stands as an obstacle in the way of seeing an Executive in place. As the Foreign Secretary outlined on 17 May, we are prepared to do whatever is necessary to protect the Belfast (Good Friday) Agreement.

Annex A

Text of 23 September 2021 Lord Frost Letter to EU Select Committee Chairs

EU RELATED SCRUTINY ARRANGEMENTS

1. I am writing to conclude recent discussions between our officials and seek your agreement on future scrutiny arrangements in light of our new relationship with the European Union. I am grateful to the officials involved in these discussions for getting us to this point.
2. As you know, my position is that we should be as open as possible in how we work with your committees, whilst noting that a new relationship with the EU requires a new approach to scrutiny and a move towards a more flexible approach, and of course in a way that is consistent with the Government's overall approach to Select Committees.
3. The scrutiny offer enclosed in the Annex seeks to reflect this and takes into account the clear representations made by your officials over the past few months.
4. I see these arrangements as part of an evolving process and commit to keeping them under review to ensure the process remains relevant and manageable for both sides.
5. I trust that the offer enclosed is acceptable to you, and I look forward to implementing it when Parliament returns from conference recess. I am grateful to you both for your continued engagement and for the valuable role that your Committees play.

Rt Hon Lord Frost CMG

Final Government Offer on Scrutiny of EU-related Business by the EU Scrutiny Committees

1. Scrutiny of the Withdrawal Agreement (excluding the Northern Ireland Protocol)

We are committed to:

- Issuing WMSs before and after WA Joint Committee (WAJC) meetings.
- Providing EMs on European Council Decisions that establish the EU position for the WAJC, before meetings wherever possible.
- Providing official-level briefings to the Committee teams in advance of all Joint Committee meetings, setting out a more in-depth UK position on agenda items and our approach to the discussion. We can also provide a post-WAJC meeting read-out.
- Ministerial appearances before the Committee and ad hoc official-level briefing as required.
- Sharing provisional agendas of WA SC meetings in advance (on a confidential basis, unless co-chairs agree to publish them).
- Sharing the WA Annual Report before publication, subject to co-chairs agreeing to publish. The first report was shared with both Committees on 18 June.
- Consulting with Committee Clerks on submission of EMs on new or amended EU law that has a direct effect on the UK under the WA.
- A Ministerial oral statement following publication of the two reports by the Commission and the Independent Monitoring Authority on the implementation of the citizens' rights chapter of the WA in early 2022.

- Reporting on the UK's outstanding financial liabilities under the financial settlement and on payments to the EU each year through the annual European Union Finances Statement.
- Writing to the chairs in advance of requesting the establishment of an arbitration panel under the Agreement.
- Issuing WMSs following the establishment of an arbitration panel and after any CJEU rulings made under the WA, and issuing an annual report on disputes raised at the WAJC.

2. Scrutiny of the Northern Ireland Protocol

We are committed to:

- Continuing the submission of EMs on EU proposals which amend or replace existing proposals that fall under scope of the NI Protocol (including tertiary legislation) and new EU proposals falling under the scope of Protocol when agreed by the Joint Committee.
- Consulting with the Clerks of the Committee on whether an EM should be provided when the UK is informed of any draft EU legislation through the JCWG which the EU have indicated they would like to add to the NIP Annexes under the Article 13(4) processes. Any agreement to share an EM is on the understanding that we would not be able to share anything that might reveal our negotiating position ahead of the relevant Joint Committee meeting.
- Officials will work with the Committees' Clerks on tailoring our EM guidance and template used by Departments to better reflect the information the Committees would find helpful to receive.
- We will share Ireland/ Northern Ireland Specialised Committee (INISC) agendas, on the same basis as the approach to sharing provisional agendas of WA SC meetings in advance (on a confidential basis, unless co-chairs agree to publish them).

3. Scrutiny of the Trade and Cooperation Agreement

We are committed to:

- Issuing WMSs before and after TCA PC meetings, using best endeavours to do so seven days in advance for pre-meeting WMSs.
- Providing EMs on European Council Decisions that establish the EU position for the PC, before meetings where possible.
- Providing official-level briefings to your Clerks in advance of all TCA PC meetings and offer post-meeting readouts.
- Sharing provisional agendas of TCA Specialised Committee meetings in advance.
- I will write to the Committees periodically a summary of activity in the Specialised and other Committees established under the TCA.
- Writing to the chairs before requesting the establishment of an arbitration panel or if it is likely that the EU will initiate dispute settlement, adopt a remedial, safeguard, or other unilateral measure, or operate the TCA "rebalancing" clause.
- Ad hoc Ministerial appearances as appropriate.

4. Ad-hoc requests for information

We are committed to:

- Sending EMs on the EU's annual Work Programme as we recognise that the EU Select Committees retain an interest in the wider EU policy direction and potential implications on both agreements.
- Continuing the practice of writing to the EU Committees about incoming EU Presidency priorities every six months.

5. Ministerial appearance before the Committee

- I am happy to continue to appear before the Lords European Affairs Committee and Commons European Scrutiny Committee on a quarterly basis. In respect of appearances before the Lords Committee and its sub-committee I am happy for my officials to work with the Clerks to determine how my quarterly meetings will best meet the needs of the main Committee and sub-committee according to the issues prevailing at the time.

Annex B

Lord Frost statement on the Protocol on Ireland/Northern Ireland: 17 December 2021

1. The objectives of the Protocol on Ireland/Northern Ireland agreed between the UK and the EU in 2019 are to protect the Belfast (Good Friday) Agreement in all its dimensions; to respect Northern Ireland's integral place in the United Kingdom, its internal market and customs territory; to uphold the essential state functions and territorial integrity of the United Kingdom; to avoid a hard border on the island of Ireland; and to help protect the EU's Single Market.
2. It is now widely accepted by all parties that the current operation of this Protocol does not fully support these objectives and that changes are needed if the current situation is to improve. It is clear, including from recent polling, that a large majority across Northern Ireland shares that perspective.
3. The Command Paper we published on 21 July outlined comprehensive and lasting solutions to the current difficulties. We decided then that the right route was to prioritise negotiated change to the Protocol rather than, at that point, use the Protocol's Article 16 safeguard measures. I and my team have engaged in detailed negotiations with the EU Commission on this basis in recent months.
4. There has been some progress, but not as much, and not as quickly as we had hoped. Although we have worked with the proposals put forward by the Commission in mid-October, they do not solve the problems, and even in some aspects take us back from the current unsatisfactory status quo.
5. The main area of progress has been on medicine supply to Northern Ireland. I believe that our proposal to remove medicines from the Protocol is still the most straightforward solution, given that the provision of health services is an essential state function and that Northern Ireland medicines are overwhelmingly sourced from elsewhere in the UK. But we have been willing to look at the EU's preferred option, pursuing unilateral amendment of its own laws. The EU's proposals, published today, follow on from discussions between our teams. They could constitute a constructive way forward, and we are willing to look at them positively, but as we have not been able to scrutinise the texts in the necessary detail we are not yet able to make that judgement with full confidence.
6. There has been much less progress in other areas. The burdensome customs and SPS arrangements for goods moving between Great Britain and Northern Ireland have had a chilling effect on trade, increasing costs and discouraging firms from trading within their own country. It is vital to get the arrangements in this area right, given the overwhelming importance to the Northern Ireland economy of links with the rest of the UK. We have argued consistently that the simplest solution is to put in place substantively different processes for goods which all sides agree will stay in the UK and those which do not. These should cover not only goods moved directly, but also the increasing proportion of goods moved by parcel, and other kinds of movements such as pets, livestock, plants, and seeds. The proposals made by the EU in October constituted a step forward but, based on what we have heard to date, our expert analysis does not support the ambitious public claims made for them.

Overall, it is not possible to envisage an agreed solution which does not deliver significant change in this area.

7. Nor have we managed to have a constructive discussion about the regulatory burdens being faced by operators in Great Britain looking to place manufactured goods on the market in Northern Ireland. These burdens will get worse over time as UK and EU rules diverge.
8. We have had some limited discussions on subsidy control. The Protocol's provisions in this area, leaving Northern Ireland subject to EU state aid rules, were agreed in 2019. Since then, the UK and the EU have agreed entirely new subsidy control rules in our new free trade deal and we have brought in an entirely new national subsidy control regime. The rules need to evolve to reflect this new reality. Northern Ireland businesses are facing unjustified burdens and complexity, and the Government cannot deliver aid to Northern Ireland, for example for Covid recovery support, without asking for the EU's permission. We need to find more appropriate and proportionate arrangements that reflect the low level of risks posed to the single market in practice by subsidies in Northern Ireland.
9. There have been relatively constructive discussions on VAT and excise policy, but we have not yet found a way of ensuring that Northern Ireland can properly benefit from its place in the United Kingdom's VAT and excise area in the same way as other parts of the UK.
10. Finally, a solution is needed on governance. As the EU's preferred way forward on medicines illustrates, neither Northern Ireland nor the UK more broadly gets any say on the way EU legislation is imposed on Northern Ireland. This remains a fundamental issue of democratic accountability. Nor is it reasonable or fair for disputes between the UK and the EU relating to the Protocol to be settled in the EU Court of Justice, the court of one of the parties. The Withdrawal Agreement already provides for the use of an independent arbitration mechanism instead, and the simplest and most durable way forward would be to agree that this should be the sole route for settling disputes in future.
11. Overall, with the potential exception of medicines, I do not believe that the negotiations are yet close to delivering outcomes which can genuinely solve the problems presented by the Protocol. The EU's proposals only cover certain areas and would not do enough to ease the burdens faced by people in Northern Ireland; or to create the conditions for genuinely cross-community support.
12. Our preference would be to reach a comprehensive solution dealing with all the issues. However, given the gravity and urgency of the difficulties, we have been prepared to consider an interim agreement as a first step to deal with the most acute problems, including trade frictions, subsidy control, and governance. Such an agreement would still leave many underlying strains unresolved, for example those caused by diverging UK and EU rules over time. It would therefore be inherently provisional by nature and would accordingly need to include mechanisms for addressing outstanding issues and resolving new concerns as they arise. The UK has proposed a number of possible ways forward, but regrettably it has not so far been possible to make progress even on what the core elements of an interim agreement might be.
13. It is disappointing that it has not been possible to reach either a comprehensive or worthwhile interim agreement this year. A solution needs to be found urgently early next year. For as long as there is no agreed solution, we remain ready to use the

Article 16 safeguard mechanism if that is the only way to protect the prosperity and stability of Northern Ireland and its people.

Annex C

Foreign Secretary Liz Truss updated the House of Commons on the government's intention to introduce legislation to make changes to the Northern Ireland Protocol.

Mr Speaker, I would like to update the House on the [Northern Ireland Protocol](#), and to lay out the next steps.

Our first priority is to uphold the [Belfast Good Friday Agreement](#) in all its dimensions. That agreement put in place a new arrangement for the governance of Northern Ireland and these islands composed of three interlocking strands:

- a power-sharing government at Stormont on the basis of consent and parity of esteem for all communities
- intensified North-South cooperation on the island of Ireland
- and enhanced arrangements for East-West cooperation

So much of the progress we have seen in Northern Ireland rests on this Agreement. And for the Agreement to continue to operate successfully, all 3 strands must function successfully.

These arrangements are the foundation on which the modern, thriving Northern Ireland is built. It commands the support of parties across this House. And we will continue to work with all communities in Northern Ireland to protect it.

As a government, we want to see a First Minister and Deputy First Minister in place, and we want to work with them to make further progress. The basis for successful power-sharing remains strong, [as my Right Honourable Friend the Prime Minister laid out yesterday](#).

However, the Belfast Good Friday Agreement is under strain.

And, regrettably, the Northern Ireland Executive has not been fully functioning since early February. This is because the Northern Ireland Protocol does not have the support necessary in one part of the community in Northern Ireland.

I would also note that all of Northern Ireland's political parties agree on the need for changes to the Protocol.

The practical problems are clear to see.

As the House will know, the Protocol has not yet been implemented in full due to the operation of grace periods and easements.

However, EU customs procedures for moving goods within the UK have already meant companies are facing significant costs and paperwork. Some businesses have stopped this trade altogether.

These challenges have been sharpened by the challenges of post-COVID economic recovery.

Rules on taxation mean that citizens in Northern Ireland are unable to benefit fully from the same advantages as the rest of the UK, like the reduction in VAT on solar panels.

SPS rules mean that producers face onerous restrictions, including veterinary certification, in order to sell food stuffs in shops in Northern Ireland.

These practical problems have contributed to the sense that the East-West relationship has been undermined.

Without resolving these and other issues, we will not be able to re-establish the Executive and preserve the hard-won progress sustained by the Belfast Good Friday Agreement.

We need to restore the balance in the Agreement.

Mr Speaker, our preference is to reach a negotiated outcome with the EU. We have worked tirelessly to that end and will continue to do so.

I have had 6 months of negotiations with Vice-President Maroš Šefčovič. This follows a year of discussions undertaken by my predecessor.

The UK has proposed what we believe to be a comprehensive and reasonable solution to deliver on the objectives of the Protocol.

This includes a trusted trader scheme to provide the EU with real time commercial data, giving them confidence that goods intended for Northern Ireland are not entering the EU Single Market.

We are already sharing over 1 million rows of goods movement data with the EU every week.

Our proposed solution would meet both our and the EU's original objectives for the Protocol. It would address the frictions in East-West trade, while protecting the EU Single Market and the Belfast Good Friday Agreement.

The challenge is that this solution requires a change in the Protocol itself, as its current drafting prevents it from being implemented, but the EU's mandate does not allow the Protocol to be changed.

This is why their current proposals are not able to address the fundamental concerns.

In fact it is our assessment that they would go backward from the situation we have today with the standstill.

As the Prime Minister said, our shared objective has to be to find a solution that can command the broadest possible cross-community support for years to come and protect the Belfast Good Friday Agreement in all its dimensions.

That is why I am announcing our intention to introduce legislation in the coming weeks to make changes to the Protocol.

Our preference remains a negotiated solution with the EU.

In parallel with the legislation being introduced, we remain open to further talks if we can achieve the same outcome through negotiated settlement.

I have invited Vice-President Šefčovič to a meeting of the Withdrawal Agreement Joint Committee in London to discuss this as soon as possible.

However to respond to the very grave and serious situation in Northern Ireland we are clear that there is a necessity to act to ensure the institutions can be restored as soon as possible.

The Government is clear that proceeding with the Bill is consistent with our obligations in international law – and in support of our prior obligations in the Belfast Good Friday Agreement

And before any changes are made we will consult businesses and people in Northern Ireland as our proposals are put forward.

I want to be clear to the House that this is not about scrapping the Protocol. Our aim is to deliver on the Protocol's objectives.

We will cement those provisions which are working in the Protocol, including the Common Travel Area, the Single Electricity Market and North-South cooperation, whilst fixing those elements that aren't: on the movement of goods, goods regulation, VAT, subsidy control, and governance.

The Bill will put in place the necessary measures to lessen the burden on East-West trade and to ensure the people of Northern Ireland are able to access the same benefits as the people of Great Britain.

The Bill will ensure that goods moving and staying within the UK are freed of unnecessary bureaucracy through our new 'green channel'. This respects Northern Ireland's place in the UK's customs territory and protects the UK internal market.

At the same time, it ensures that goods destined for the EU undergo the full checks and controls applied under EU law.

This will be underpinned by data-sharing arrangements that I have already set out.

It will allow both East-West trade and the EU single market to be protected while removing customs paperwork for goods remaining in the UK.

The Bill will remove regulatory barriers to goods made to UK standards being sold in Northern Ireland. Businesses will be able to choose between meeting UK or EU standards in a new dual regulatory regime.

The Bill will provide the Government with the ability to decide on tax and spend policies across the whole of the UK.

It will address issues related to governance, bringing the Protocol in line with international norms. At the same time, it will take new measures to protect the EU Single Market by implementing robust penalties for those who seek to abuse the new system. And it will continue to ensure that there is no hard border on the island of Ireland.

I will publish more detail on these solutions in the coming weeks.

And let me be crystal clear that even as we do so, we will continue to engage with the EU.

The Bill will contain an explicit power to give effect to a new, revised Protocol if we can reach an accommodation that meets our goal of protecting the Belfast Good Friday Agreement. We remain open to a negotiated solution, but the urgency of the situation means we can't afford to delay any longer.

The UK has clear responsibilities as the sovereign government of Northern Ireland to ensure parity of esteem and the protection of economic rights.

We are clear that the EU will not be negatively impacted in any way – just as we have ensured the protection of the EU Single Market since the existence of the Protocol.

We must restore the primacy of the Belfast Good Friday Agreement in all its dimensions as the basis for the restoration of the Executive.

We will do so through technical measures designed to achieve the stated objectives of the Protocol, tailored to the reality of Northern Ireland.

We will do so in a way that fundamentally respects both unions: that of the UK and of the EU.

And we will live up to our commitments to all communities of Northern Ireland. As co-signatory and co-guarantor of the Belfast Good Friday Agreement, we will take the necessary decisions to preserve peace and stability.

I commend this statement to the House.