



House of Commons
European Scrutiny Committee

**Eighth Report of
Session 2022–23**

Documents considered by the Committee on 12 October 2022

Report, together with formal minutes

*Ordered by the House of Commons
to be printed 12 October 2022*

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) can be downloaded from GOV.UK: <https://www.gov.uk/government/collections/explanatory-memoranda-on-eu-documents>. EMs can be searched by Council or Commission reference number. Letters from the Committee and those issued by Ministers can be found in the correspondence section of the Committee's website: <https://committees.parliament.uk/committee/69/european-scrutiny-committee/publications/3/correspondence/>.

Explanatory Memoranda and letters published before 31 March 2022 can be found on the National Archives website—<https://webarchive.nationalarchives.gov.uk/search/>—by restricting searches to <https://europeanmemoranda.cabinetoffice.gov.uk/>

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1 Northern Ireland Protocol: Equivalence of seed potatoes¹

These EU documents are politically important because:

- the EU is still refusing to grant equivalence to seed potatoes produced in Great Britain, meaning that they cannot be exported from Great Britain to the EU and Northern Ireland.

Action

- Write to the Minister.
- Draw to the attention of the Environment, Food and Rural Affairs Committee, the Northern Ireland Affairs Committee, the Scottish Affairs Committee and the Welsh Affairs Committee.

Overview

1.1 To avoid potato diseases² entering the EU's internal market, the EU bans³ the import of seed potatoes from countries outside the internal market, apart from Switzerland as it applies EU plant health rules. Despite efforts by the UK Government to secure a derogation, the ban applies to trade from Great Britain to Northern Ireland as Northern Ireland remains within the EU's internal market for goods.

1.2 The EU has already granted the UK equivalence for fruit and vegetable plants and plant propagating material⁴ as well as for Forest Reproductive Material⁵ and for seed of the main agricultural species.⁶ It has consistently refused to do so, however, for seed potatoes. We set out further details of this issue in our [Report](#) of 24 March 2021⁷ and in our [Report](#) of 26 May 2021.⁸ The Minister for Rural Affairs and Biosecurity (Rt Hon. Lord Benyon) has [replied](#) to our last [letter](#) raising concerns about this issue.

1 (a) Proposal for a Decision amending Council Decision 2008/971/EC as regards the equivalence of forest reproductive material produced in the United Kingdom to such material produced in the Union (b) Proposal for a Decision amending Council Decisions 2003/17/EC and 2005/834/EC as regards the equivalence of field inspections and the equivalence of checks on practices for the maintenance of varieties of agricultural plant species carried out in the United Kingdom; Council and/or COM number: (a) [COM\(20\) 852](#) (b) [5004/21+ ADD 1](#); Legal base: Article 43(2) TFEU; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC number: (a) 41765 (b) 41769.

2 Agricultural, Horticultural and Development Board (AHDB), '[Potato diseases and defects](#)' [Accessed 28 September 2022].

3 Annex VI of [Commission Implementing Regulation \(EU\) 2019/2072](#) establishing uniform conditions for the implementation of Regulation (EU) 2016/2031, as regards protective measures against pests of plants.

4 [Commission Implementing Decision \(EU\) 2020/2219](#).

5 [Decision \(EU\) 2021/536](#) of the European Parliament and of the Council of 24 March 2021 amending Council Decision 2008/971/EC as regards the equivalence of forest reproductive material produced in the United Kingdom.

6 [Decision \(EU\) 2021/537](#) of the European Parliament and of the Council of 24 March 2021 amending Council Decisions 2003/17/EC and 2005/834/EC as regards the equivalence of field inspections and the equivalence of checks on practices for the maintenance of varieties of agricultural plant species carried out in the United Kingdom

7 European Scrutiny Committee, Forty-second Report HC 229–xxxvi (2019–21), [chapter 2](#) (24 March 2021).

8 European Scrutiny Committee, Second Report HC 121–ii (2021–22), [chapter 5](#) (26 May 2021).

1.3 Responding to our letter, the Minister has summarised the action that it has taken to engage with the Commission since we last wrote. To date, the Commission has identified no resolution unless the UK agrees to align with EU plant health rules. The Government, says the Minister, has raised the issue through Trade and Cooperation Agreement (TCA) mechanisms at the [first meeting](#)⁹ of the Trade Specialised Committee on Sanitary and Phytosanitary (SPS) Measures in September 2021. This was discussed in the context of Article 73 of the TCA SPS chapter, which sets out that the SPS measures of each Party need to be proportionate to the risks identified and not more trade restrictive than necessary to achieve the importing Party’s appropriate level of protection. At this meeting the UK also requested a risk assessment relevant to trade in this commodity between EU and GB, under Article 77(1)(i) of the TCA.

1.4 The UK and EU have since held a series of technical level meetings to discuss the matter further. The UK has also submitted a written request, under Article 77, to the Commission for their risk assessment of the measures underpinning the import ban on seed potatoes. The UK will continue to use meetings with the EU held under the auspices of the TCA this autumn to raise the issue, with a view to finding a solution to enable this trade to resume.

1.5 The Minister adds that the UK has repeatedly cited this issue as a clear example of how the Northern Ireland Protocol has caused unintended consequences that have a societal impact in Northern Ireland. He says that it is the UK’s preference to resolve this through negotiation and the UK’s door remains open but the EU has so far not been willing to make changes to the Protocol, to allow for such movements and deliver on the wider solutions needed for Northern Ireland. In response, says the Minister, the UK has introduced the Northern Ireland Protocol Bill to fix the practical problems the Protocol has created, including that of seed potato movements into Northern Ireland. He says that the Bill avoids a hard border on the island of Ireland, protects the integrity of the UK and safeguards the EU Single Market.

Our assessment

1.6 The continued difficulties in securing equivalence for seed potatoes are highly regrettable. We note that the issue was raised at the first meeting of the Trade Specialised Committee on SPS Measures last September. As those Committees should meet at least annually unless both Parties decide otherwise, we anticipate another meeting imminently. We will clarify with the Government the timing of the next meeting, whether the Government will pursue this issue in that context or whether it already has if the meeting has taken place. We will also clarify whether the UK has received from the Commission the risk assessment that it has requested.

Action

1.7 We have written to the Minister for Rural Affairs and Biosecurity (Rt Hon. Lord Benyon) as set out below, looking forward to a further update in due course.

9 HM Government, Trade Specialised Committee on Sanitary and Phytosanitary Measures: minutes of the meeting of 22 to 23 September 2021.

1.8 We are reporting the Minister's letter, and our response, to the House and we draw them to the attention of the Environment, Food and Rural Affairs Committee, the Northern Ireland Affairs Committee, the Scottish Affairs Committee and the Welsh Affairs Committee.

Letter from the Chair to the Minister for Rural Affairs and Biosecurity (Rt Hon. Lord Benyon)

We considered your letter of 7 September 2022 on the above documents at our meeting of 12 October 2022.

The continued difficulties in securing equivalence for seed potatoes are highly regrettable. We note that the issue was raised at the first meeting of the Trade Specialised Committee on SPS Measures last September. As these Committees are required to meet at least annually unless the Parties agree otherwise, can you confirm a date for the next meeting and that you will pursue this issue in that context? If the meeting has already taken place, please confirm that the issue was raised and the outcome of the discussion.

Second, the Government has clearly been making efforts to secure the Commission's risk assessment under Article 77 of the TCA. Have you received such a risk assessment?

We welcome the Government's efforts to overcome the difficulties and look forward to a further update within one month, addressing the queries above and informing us of any substantive progress.

2 Fluorinated Greenhouse Gases¹⁰

This EU document is politically important because:

- it will apply in Northern Ireland, creating divergence with regulation currently applicable in Great Britain; and
- the Government intends to take the Commission’s proposal into account when reviewing GB legislation in this area.

Action

- Write to the Minister.
- Draw to the attention of the Environmental Audit Committee and the Northern Ireland Affairs Committee.

Overview

2.1 The European Commission [is proposing](#) measures to intensify the phasedown of harmful greenhouse gases—hydrofluorocarbons (HFCs)¹¹—in the EU. The measures revoke and replace existing legislation, which is applicable in Northern Ireland (NI) under the Northern Ireland Protocol. As such, they potentially have implications across the UK and could, in particular, affect the UK’s own policy review for Great Britain (GB).

2.2 As well as intensifying the phasedown of HFCs, the proposal introduces some additional prohibitions to those already in place. These include prohibitions on: air-conditioners and heat pumps containing or whose functioning relies upon Fluorinated Greenhouse Gases (F-Gases); non-refillable containers; different types of switchgear (equipment used on the electricity grid); personal care products; skin-cooling equipment; fire protection; and the use of desflurane as an anaesthetic gas.

2.3 We set out further information on the Commission’s proposal and the Government’s response in our [Report](#) of 8 June 2022,¹² when we also [wrote](#) to the then Parliamentary Under-Secretary of State (Jo Churchill MP) seeking further information. Her successor, Steve Double MP, [responded](#) as set out below.

2.4 In summary, the Government acknowledges the potential impact of the proposal on movements from GB to NI. The Government is engaging with both the industry and with the European Commission. At this stage, however, it is not possible to discern what divergence might look like between the EU and UK approaches as both policy regimes are evolving.

10 Proposal for a Regulation on fluorinated greenhouse gases, amending Directive (EU) 2019/1937 and repealing Regulation (EU) No 517/2014; Council and COM numbers: 8042/22, [COM\(2022\) 150](#); Legal base: Article 192(1) TFEU, QMV, ordinary legislative procedure; Department: Environment, Food and Rural Affairs; Devolved Administrations: Consulted; ESC number: 42050.

11 Hydrofluorocarbons are one of several Fluorinated Greenhouse Gases (F-Gases), which are human-made gases used in a range of everyday and industrial products and processes. Their global warming effect is substantially greater than carbon dioxide, and emissions are rising

12 European Scrutiny Committee, Third Report HC 119–iii (2022–23), [chapter 1](#) (8 June 2022)

2.5 We have written to the Government signalling our continued interest in the matter and requesting an update in due course.

Reply from the Government dated 25 July 2022

2.6 In his letter, the then Minister identified the key elements of the Commission proposal as being the significant changes to the existing HFC phasedown schedule and end target, together with the potential introduction of new bans. He acknowledged that both have the potential to further limit movements of bulk HFC gas and F-gas equipment from GB to NI.

2.7 UK officials, said the then Minister, have discussed the key provisions of the proposed new Regulation with both industry and the European Commission to gather views from both perspectives. The main industry concerns relate to the accelerated and extended HFC phasedown, together with the new bans, although there is support from relevant sectors for proposals on training on alternative gases and action on illegal trade. These industry views, which are part of an ongoing feedback process, continue to inform thinking for the UK's own review of the GB F-gases Regulation.

2.8 The Commission, reported the Minister, has explained their confidence that the amount of quota liquidity within the existing phasedown, together with technological developments regarding alternative gases, will ensure the increased phasedown ambition is deliverable. On the bans, the Commission point again to technological development as well as exemptions within the provisions relating to safety and energy efficiency.

2.9 Concluding, the then Minister said that the Government expects the proposed Regulation to undergo changes as it progresses through the EU's ordinary legislative procedure. Since the GB F-gases Regulation is being reviewed to provide the basis for amendment as well, the Minister said that it is not currently possible to set out precisely what divergence might look like between the two revised Regulations.

Our assessment

2.10 In GB, the UK Government, Welsh Government and Scottish Government have agreed to operate a single GB F-Gases regulatory system, based at the moment on the EU F-Gases Regulation ([Regulation \(EU\) No 517/2014](#)) as retained in the UK. A Common Framework will support this joint work.¹³ The then Parliamentary Under-Secretary of State (Jo Churchill MP) said in her original [Explanatory Memorandum](#) that the Government is undertaking its own review of the GB framework, being mindful of the implications of divergence between GB and NI.

2.11 Noting the potential impact of divergence as well as the review of the GB framework, we are pleased to hear that the Government is engaging with both industry and with the European Commission. We accept the Government's contention that it is not possible at the moment to identify how divergent the rules may turn out to be, although neither should the Government adopt a 'wait and see' approach. The Government acknowledges the possible impact of divergence and, while recognising the regulatory autonomy of the

13 HM Government, '[Ozone-Depleting Substances and Fluorinated Greenhouse Gases Common Framework: Provisional Framework, Outline Agreement and Concordat](#)' CP 594 (February 2022)

GB and EU systems, it does make sense to at least minimise the impact of any divergence. That requires careful monitoring while the respective plans are being drafted rather than once they are finalised.

2.12 We remain interested in the interaction of the Commission’s proposed prohibition on F-gases in heat pumps with climate objectives. We understand that industry—represented by the European Heat Pump Association—argues that the proposal is incompatible with climate objectives, but we also understand that cheaper and more efficient alternative refrigerants, such as propane, are available and would be consistent with climate ambitions.¹⁴

2.13 We will request an update on progress within six months, including on the Government’s approach to phasing-out the use of F-gases in heat pumps.

Action

2.14 We have written to the Government as set out below.

2.15 We are drawing the Minister’s letter and our response to the attention of the Environmental Audit Committee and the Northern Ireland Affairs Committee.

Letter from the Chair to the Parliamentary Under-Secretary of State (Scott Mann MP), Department for Environment, Food and Rural Affairs

We considered your predecessor’s letter of 27 July on the above document at our meeting of 12 October 2022.

We accept the Government’s contention that it is not possible at the moment to identify how divergent the rules may turn out to be, although neither should the Government adopt a ‘wait and see’ approach. While recognising the regulatory autonomy of the GB and EU systems, it does make sense to at least minimise the impact of any divergence. That requires careful monitoring while the respective plans are being drafted rather than once they are finalised.

A potentially significant area of divergence is the approach to phasing-down the use of F-gases in heat pumps. We are aware that there is resistance among industry representatives to the Commission’s proposed phase-down but that there are cheaper and more efficient alternative refrigerants available.

We ask that you update us on developments in this area within six months, including on your approach to the use of F-gases in heat pumps.

14 European Heat Pump Association, ‘[EHPA Position Paper on the revision of the F-gas Regulation \(517/2014\)](#)’ [Accessed 6 October 2022].

3 Reform of the EU Customs Union and the EU Single Customs Window¹⁵

This EU document is legally and politically important because:

- it will establish a ‘Single Customs Window’ (SCW) for goods entering the EU from non-EU countries like the UK, in essence a new way of connecting IT systems to enable traders to clear certain EU border formalities more quickly and efficiently. In parallel, the European Commission is also considering more fundamental reforms to the operation of the EU’s external customs border for trade in goods with non-EU countries like the UK, with proposals due later this year;
- changes to the EU’s customs border are directly relevant for the UK given the significant volume of UK/EU trade in goods. The Government has identified potential opportunities to link the SCW to the UK’s own Single Trade Window, currently in development; and
- as EU customs formalities continue to apply in Northern Ireland, the UK may also have to implement EU customs reforms there (including for use by traders sending goods there from Great Britain). However, in light of the Government’s recent Northern Ireland Protocol Bill to dis-apply parts of the Protocol unilaterally, it is unclear what effect EU reforms in this area might have under UK law in respect of Northern Ireland.

Action

- Write to the Financial Secretary to the Treasury, Andrew Griffith MP to seek further information on the implications of EU customs reforms for the UK, and draw this chapter to the attention of the International Trade Committee, the Northern Ireland Affairs Committee, the Public Accounts Committee and the Treasury Committee.

Overview

3.1 Goods entering or leaving the EU as part of trade with non-EU countries like the UK can be subject to numerous border formalities, such as customs declarations or food safety controls. Depending on the nature of the goods being traded and whether they are imports or exports, complying with the EU’s border formalities can require traders—or their representatives, such as customs brokers—to engage with multiple different public

¹⁵ Proposal for a Regulation establishing the European Union Single Window Environment for Customs and amending Regulation (EU) No 952/2013; COM number: COM(20) 673; Legal base: Articles 33, 114 and 207 TFEU; ordinary legislative procedure; QMV; Department: HM Revenue and Customs; Devolved Administrations: Northern Ireland Executive consulted; ESC number: 41624.

authorities before the goods are given permission to enter or leave the EU, typically by the national customs authorities of the EU Member State where the goods are to cross the Union’s external border.¹⁶

3.2 To make the EU’s border formalities more efficient, the European Parliament and the EU’s Member States in the Council of Ministers in May 2022 provisionally [agreed](#) a new Regulation to establish a ‘Single Customs Window’ (SCW) to streamline customs processes at the border and help traders submit documentation more efficiently.¹⁷ As we described in more detail in our [Thirtieth Report of Session 2019–21](#)¹⁸ in November 2020, the SCW is in essence a new multifaceted IT system that would:

- reduce the need for EU customs officials to manually verify compliance of a particular consignment with many—but not all¹⁹—of the EU’s non-customs formalities for trade in goods (which vary depending on the nature of a consignment).²⁰ It would require EU Member States to link their customs authorities digitally to a number of EU-level databases that hold regulatory information necessary to clear a specific consignment of goods from customs,²¹ and
- benefit traders, as each EU country would have to establish a digital portal where businesses can submit (and re-use) the customs and regulatory documentation required for a specific consignment of goods electronically, insofar as these formalities are included in the SCW.²²

3.3 As such, the Single Customs Window would not change the nature, frequency or scope of EU border formalities for goods, but only how traders can submit relevant documentation to the relevant border authorities (and how that information is shared between those). Formal adoption of the EU Regulation establishing the Single Customs Window is expected to take place in autumn 2022. The scheme’s full implementation is likely to be phased in by the Member States over a period of approximately ten years

16 Traders seeking to secure clearance of goods by customs for import into or export from the EU often have to submit not only customs declarations under the Union Customs Code (UCC), but—depending on the consignment—also provide additional documentation or licences under other EU legislation to a variety of different regulatory bodies relating for example to “health and safety, the environment, agriculture, fisheries, cultural heritage, and market surveillance and product compliance”.

17 The legislation is based on a draft Regulation the European Commission [proposed](#) in October 2020.

18 European Scrutiny Committee, Thirtieth Report of Session 2019–21 (HC 229–xxv), [chapter 5](#). See also: European Scrutiny Committee, Sixteenth Report of Session 2021–22 (HC 121–xv), [chapter 1](#) and Twenty-first Report of Session 2021–22 (HC 121–xx), [chapter 2](#).

19 The SCW would not link customs to all regulatory databases relevant for goods entering or leaving from the EU. This is because not all trade formalities for which documentation is stored centrally at EU-level already have fully functional centralised databases (e.g. catch certificates for Illegal, Unreported and Unregulated (IUU) fishing and waste shipment documentation). More importantly, many of the EU’s border formalities are performed using national, not EU-level, systems and databases. Including these in the Single Window Environment would greatly increase the complexity of the work. However, the European Commission has not ruled out adding national systems to the EU’s ‘Single Window’ in the future, subject to an assessment “on a case by case basis”.

20 These formalities might include for example import quotas, or checks related to product safety or environmental standards.

21 This will be done via a centralised EU-operated IT platform (‘EU CSW-CERTEX’): the EU Customs Single Windows-Certificates Exchange.

22 This would then replace any existing separate IT portals for sharing information relating to these various formalities. However, it appears to be optional for individual EU countries to decide whether traders can submit documentation for all relevant formalities covered by the SCW in their jurisdiction via a single submission (rather than still having to make multiple submissions, albeit using only the unified SCW digital portal).

because of its technical complexity and the costs involved.²³ An important role is foreseen for the European Commission in establishing further technical specifications to make the Single Customs Window work across all 27 Member States, including common data sets to be used by traders and authorities.

3.4 In parallel to the start of technical work on the implementation of the Single Customs Window, the European Commission is also preparing further proposals for reform of the EU Customs Union. On the basis of an [independent evaluation](#) published in March 2022,²⁴ the Commission is due to present draft legislation before the end of the year to improve the operation of EU border controls on imported goods, especially products bought online by consumers from outside the EU. Among the changes being considered are a requirement for traders to apply for “Authorised Economic Operator” status to be allowed to bring goods into the EU (or, failing that, take out a financial guarantee to cover penalties for breaches of EU customs rules), as well as new requirements for companies to submit commercial data to customs.

Potential implications for the UK

3.5 As we noted in our [Thirtieth Report of Session 2019–21](#),²⁵ the Single Customs Window and other EU customs reforms, despite the UK’s withdrawal from the EU in January 2020, EU are still relevant for the UK and for British businesses. In summary, that is for two key reasons:

- first, there are potential benefits of the EU initiative for British companies that trade with the EU, insofar as the Single Customs Window and other reforms to the EU’s customs border could streamline and speed up formalities when British goods are exported to Ireland or the continent;²⁶ and
- second, Article 5 of the [Protocol on Ireland/Northern Ireland](#) in the [Withdrawal Agreement](#) on the UK’s exit from the EU requires Northern Ireland to continue applying EU customs and regulatory controls on goods from Great Britain and other non-EU jurisdictions for the time being.²⁷ The UK may therefore be

23 The Explanatory Memorandum accompanying the SCW proposal states that it “is expected to generate implementation costs totalling €64.7m evenly spread over the first 7 years of phased implementation and € 6.35m of maintenance costs annually once fully operational”. The Single Customs Window is part of a wider set of planned reforms under the European Commission’s [Customs Union Action Plan](#), which also includes further proposals for reform of the EU’s ‘Customs Code’ later in 2022.

24 European Commission Wise Persons Group, ‘[Report on the Reform of the EU Customs Union](#)’ (March 2022).

25 European Scrutiny Committee, [Thirtieth Report of Session 2019–21](#) (HC 229–xxv), [chapter 5](#). See also: European Scrutiny Committee, [Sixteenth Report of Session 2021–22](#) (HC 121–xv), [chapter 1](#) and [Twenty-first Report of Session 2021–22](#) (HC 121–xx), [chapter 2](#).

26 The EU’s Member States, combined in their Single Market, remain the UK’s largest trading partner according to statistics by the ONS. After Brexit, traders moving goods between EU and Great Britain (but not Northern Ireland, as noted elsewhere in this chapter) are now required to submit significant volumes of customs and regulatory documentation to ensure clearance of their shipments by the border authorities on both sides. A [survey](#) by the British Chambers of Commerce found that many British exporters had encountered difficulties complying with these new trade formalities. In that context, the fact that the Single Customs Window is aimed at reducing the length and burden of EU customs processes could speed up the conduct of UK-EU trade to the benefit of traders on both side of the border. See: British Chambers of Commerce, “[The Trade and Cooperation Agreement: One Year On](#)” (16 February 2022, accessed 13 July 2022).

27 The provisions of the Protocol that require Northern Ireland to remain aligned with EU law on customs and goods are subject to the periodic democratic consent of the members of the Northern Ireland Assembly under Article 18 of the Protocol. They are due to vote on whether to keep those provisions in effect for the first time no later than the end of 2024, and if they reject them that element of the Protocol will become inoperative after a two-year period, i.e. from the end of 2026.

required to implement the new EU Single Customs Window IT system, as well as any further reforms of the Customs Union, in Northern Ireland (including in respect of goods coming from Great Britain).

3.6 It is in this legal and political context that we have scrutinised the Government’s position with respect to the EU customs reforms. In particular, we have sought to clarify the potential ramifications of the EU Single Customs Window under the Northern Ireland Protocol since late 2020, not least because the fact these mitigations are being developed serves to demonstrate how EU trade formalities as applicable under the Protocol can disrupt trade between Northern Ireland and the rest of the UK.²⁸ With respect to the potential application of the EU SCW in the Northern Ireland under the Protocol, in an [Explanatory Memorandum](#) dated November 2020, the Treasury noted that the SCW *could* be used to clear goods entering or leaving Northern Ireland because of the terms of the Protocol, but noted that implementation of the initiative at Northern Irish ports would be subject to “further discussions” between the UK and the EU in due course. To date, the Government does not appear to have commented publicly on the wider process of EU customs reform which the European Commission is currently undertaking.

3.7 In any event, the precise impact of the Single Customs Window (and any other EU customs reforms) under the Protocol is of course also linked to the Government’s ongoing talks with the EU on the Protocol’s operation and implementation. Since July 2021, Ministers have sought to reduce the extent to which EU law—including in relation to customs procedures—applies in Northern Ireland.²⁹ The Government’s preferred outcome remains a “negotiated solution”³⁰ with the EU on changing the operation of the Protocol, but this has so far proved elusive. In March 2022, the Minister [told us again](#) that more definitive answers depend on “the outcome of [the] discussions” on the operation of the Protocol with the EU and “so whilst talks are ongoing, it is not possible to comment on the applicability of the SCW in NI”.³¹

3.8 Since then, the Government has also introduced its [Northern Ireland Protocol Bill](#) in the House of Commons, in June 2022. This would dis-apply significant elements of the Protocol in UK law, including Article 5 on the application of EU customs rules in Northern Ireland. It would also give Ministers the power to apply their preferred alternative arrangements for trade in goods between Northern Ireland and the rest of the UK unilaterally, as described in a new [policy paper](#).³² This would include a new “trusted trader” scheme, whose beneficiaries would avoid most if not all customs formalities when sending goods from Great Britain to Northern Ireland through a new ‘green lane’. Goods entering Northern Ireland but self-declared as being destined for Ireland or the wider EU

28 For example, in February 2022 we concluded: “Should the UK have to implement the EU’s Single Customs Window in respect of goods entering or leaving Northern Ireland because of the Protocol, the practical implications are not clear at this stage (not least because its technical specifications are yet to be established). Where the SCW might facilitate trade between Great Britain and the EU [...] by streamlining border formalities, it could do similarly for movements of goods between Great Britain and Northern Ireland. However, the fact that there is scope for such facilitations, where there were previously no customs formalities at all, only serves to underline the fundamental shift that the Protocol represents for the treatment of the flow of goods between Northern Ireland and the rest of the UK.”

29 HM Government, ‘[Northern Ireland Protocol: the way forward](#)’ (CP 502, July 2021).

30 Hansard [HC Deb. vol. 717 col. 38](#), 27 June 2022. [Online]. [Accessed 12 July 2022].

31 [Letter](#) from the Financial Secretary to the Treasury to the Chair of the European Scrutiny Committee (7 March 2022). The Minister committed, though, to “respond to the questions that you have set out in writing in more detail” once she is “in a position to do so”.

32 HM Government, ‘[Northern Ireland Protocol: the UK’s solution](#)’ (13 June 2022).

Single Market, however, would enter a ‘red lane’ and still undergo full EU border controls (which would continue to evolve in line with EU law, for example through the introduction of the Single Customs Window). The EU has strongly opposed any unilateral approach by the UK, and has made its own [proposals](#) on changing customs rules in Northern Ireland as a basis for further talks with the Government.³³ The outcome of Parliament’s consideration of the Bill, and therefore the extent to which the legal effects of EU customs laws in Northern Ireland might be changed under domestic law, is unclear at this stage.

Interaction of EU customs reforms with the UK ‘Single Trade Window’

3.9 It is also important to note at this juncture that the Government is developing the UK’s own £180 million ‘Single Trade Window’ (STW), analogous to the EU’s Single Customs Window,³⁴ to “reduce the cost of trade by streamlining trader interactions with border agencies”. The Government’s [initial consultation](#) on its Single Trade Window only closed on 28 February 2022, and it is due to “start to deliver” from 2023.³⁵ HM Revenue and Customs [advertised](#) for a “strategic/technical partner” for the project in May 2022.

3.10 Ministers have also initiated discussions with the EU on a possible linkage between the UK Single Trade Window and the EU Single Customs Window. The Government [said in February 2021](#) that it is “open to the opportunity of interoperability between [the] UK and EU systems”.³⁶ At the first [meeting of the new UK/EU Specialised Committee on Customs Cooperation](#) on 7 October 2021,³⁷ UK officials therefore “outlined potential scope for future cooperation regarding Single Trade Window, interoperability, exchange of information and how best to use data.”³⁸ The Treasury [has also stated](#) that “in a scenario where both Single Windows apply to Northern Ireland” in terms of goods entering or leaving that territory, the Government’s intention is that “traders who need to interact with both systems will only need to submit data once via a single online portal”,³⁹ implying that the interoperability sought by the Government would include an ‘umbrella’ interface that connects to both the EU’s Single Customs Window and the UK’s Single Trade Window

33 European Commission, [“Protocol on Ireland/Northern Ireland: Position paper on possible solutions—Customs”](#) (15 June 2022).

34 HM Government, [‘2025 UK Border Strategy’](#) (CP 352, December 2020).

35 Written Statement, ‘Brexit Opportunities’ (HCW5796, 28 April 2022).

36 [Letter](#) from Rt Hon. Jesse Norman MP to Lord Kinnoull, 25 February 2021.

37 Minutes of the 1st [EU/UK Specialised Committee on Customs Cooperation](#) of 7 October 2021, published 26 November 2021.

38 While Article 118 of the EU/UK Trade and Cooperation Agreement (TCA) requires both the UK and EU to “endeavour to establish a single window” for trade and customs purposes, it is silent on the linking of the two systems, which is therefore entirely at the discretion of both sides. In March 2022, the Treasury provided further information on the proposals made by the Government on potential linkage of the UK and EU ‘single window’ initiatives, noting that “EU officials emphasised the importance of maintaining an open channel of communication to understand better each other’s ideas and how we might best move forward”. Overall, the Minister says, her officials came away from the meeting “reassured that the discussion was positive and that both parties were supportive of further discussion, which is expected to become more substantive as our policy thinking develops”. [Letter](#) from Lucy Frazer QC MP to Sir William Cash (7 March 2022).

39 [Letter](#) from Rt Hon. Jesse Norman MP to Lord Kinnoull, 25 February 2021.

in Northern Ireland.⁴⁰ It is not clear to what extent the UK scheme would need to mirror the scope and capabilities of the EU’s Single Customs Window for interoperability to be feasible.

3.11 The EU has also not confirmed that it will actively work with the UK to achieve interoperability. As such, as of September 2022, it is not clear whether the Government and the EU can agree any formal interoperability between their respective ‘single windows’, and the impact of the continued lack of agreement between the two sides on the future of the Northern Ireland Protocol (as is, indeed, how the EU Single Customs Window and other EU customs reforms may affect Northern Ireland more generally). A next meeting of the UK/EU Specialised Committee on customs cooperation is tentatively scheduled for autumn 2022.

Conclusions and action

3.12 The EU have now agreed on the legal framework for their Single Customs Window, and its formal adoption and technical implementation is expected to get underway in the coming months. Separately, further proposals are being developed by the European Commission for potentially significant reforms of the way the EU customs border operates. As we have explained in this chapter, these developments still matter for the UK because they will affect trade between Great Britain and the EU, and—without prejudice to the Government’s recent Bill—could have direct consequences for the customs formalities that take place on goods entering Northern Ireland under the terms of the Northern Ireland Protocol.

3.13 However, significant uncertainty remains about what these developments mean for the UK both as a close trading partner of the EU’s and under the terms of the Northern Ireland Protocol. A definitive assessment of how EU customs reforms may impact on Northern Ireland in particular is not possible while there is uncertainty regarding the UK’s approach to implementation of the Protocol in its domestic law, given the Government is seeking to unilaterally dis-apply significant elements of it in the absence of an agreement with the EU. Similarly, we do not know what progress the Government has made since October last year in securing interoperability between the EU and UK ‘single windows’ for trade (and to what extent disagreements over the Protocol may impede effective customs cooperation in this area).

3.14 We have therefore written to the Financial Secretary to the Treasury, Andrew Griffith MP, to ask for an update on the implications of the EU Single Customs Window for the UK, both under the Northern Ireland Protocol and more generally, and on the Government’s engagement with the wider process of EU customs reform that is currently underway.

40 However, the Minister admitted that this would “be dependent on the technical capabilities of the EU’s Single Window environment”. The Government’s policy paper on the UK STW does not refer to Northern Ireland or the Protocol explicitly. In the context of potential interoperability between the UK and EU ‘single windows’ for trade, of particular relevance is that, because of Northern Ireland’s unique position straddling the UK and EU markets, there may be consignments of goods that cross its borders that are subject to both EU and UK border formalities. As such, traders may have to use both the UK STW and the EU SCW for specific goods being imported into or exported from Northern Ireland. Having to use two different systems to submit documentation would, in some ways, defeat the purpose of having a ‘single’ window for relevant customs formalities (although, as noted, both the UK and EU initiatives are unlikely to offer a single IT portal for their full range of trade formalities, at least initially).

In anticipation of the Minister’s reply, we draw these developments to the attention of the International Trade Committee, the Northern Ireland Affairs Committee, the Public Accounts Committee and the Treasury Committee.

***Letter from Sir William Cash to the Financial Secretary to the Treasury
(Andrew Griffith MP)***

You will be aware that the EU earlier this year reached provisional agreement on the legal framework for its new Single Customs Window, a new IT initiative similar to the UK’s Single Trade Window to streamline border formalities for goods entering and leaving the EU Customs Union.⁴¹ As we have corresponded with you on this previously, you know that we are interested in the implications of the SCW both under the Northern Ireland Protocol, given that it would fall within the definition of EU customs legislation that continues to apply in Northern Ireland by virtue of Article 5(2) of the Protocol, and for British businesses exporting goods to the EU.

In the current context, we appreciate that the extent to which the Single Customs Window (and other reforms of the EU’s Customs Code) are also inextricably bound up in the Government’s position on the need for changes to the Protocol, and could be affected by the changes foreseen to its domestic implementation by the Northern Ireland Protocol Bill. Under the Protocol as it currently applies, the EU SCW could eventually apply to all goods entering Northern Ireland from outside the EU, including from Great Britain. However, equally, the Government has proposed that even under its alternative arrangements, goods entering Northern Ireland but declared as being destined for the EU “would be subject to full checks and controls and full customs procedures”. That would suggest the UK has to implement the Single Customs Window in some form in Northern Ireland either way.

We are of course also aware of proposals made by the Government to the EU for interoperability between the EU Single Customs Window and the separate UK Single Trade Window being developed by HMRC. In your previous update, you noted that following initial discussions with the EU in the relevant EU/UK Specialised Committee, your Department was “reassured that the discussion was positive and that both parties were supportive of further discussion, which is expected to become more substantive as our policy thinking develops”.

Lastly, we have been made aware of an evaluation of the EU Customs Union carried out by a ‘Wise Persons’ Group’, on the basis of which the European Commission is now preparing draft legislation for reform of the operation of the EU’s external border for goods. We understand proposals to that effect are likely to be published in December this year, followed by the normal EU legislative process. For the same reasons as outlined above, those proposals will be relevant to the UK, and perhaps even more so as the recommendations made in the evaluation, if implemented, could increase customs checks, formalities and paperwork for British traders when sending goods to the EU (and possibly to Northern Ireland too).

In light of the above, we would be grateful for an update from you on the following matters.

41 Proposal for a Regulation establishing the European Union Single Window Environment for Customs and amending Regulation (EU) No 952/2013; COM number: COM(20) 673 (ESC number: 41624).

- Can you confirm that, under the proposals put forward by the Government to modify the operation of the Northern Ireland Protocol, the EU's Single Customs Window would apply for goods going into Northern Ireland through the 'red channel' on their way to Ireland? If so, what discussions is the Government having with the EU to ascertain the work that may be necessary to implement the SCW in Northern Ireland, and how will it seek to engage with the forthcoming drafting of implementing technical rules by the European Commission that are key to the implementation of the scheme? Does the Government have any specific priorities that it would like to see reflected in those EU implementing acts?
- What progress, if any, has been made on finding opportunities for formal interoperability and exchange of data between the EU Single Customs Window and the UK Single Trade Window? With a view to maximising such interoperability, while reflecting the UK and EU's status as separate customs jurisdictions, does the design and scope of the EU scheme as now provisionally agreed raise any issues from a UK Government perspective? What are the next steps, and overall proposed timescale, for operationalising any linkages between the EU SCW and the UK STW?
- Has the Government formed a view of the recommendations made by the EU's 'Wise Persons' Group' on reform of the EU Customs Union, in particular with respect to its potential implications for the operation of EU customs controls in Northern Ireland (whether in 'red lanes' or otherwise)? How does it intend to engage with the Commission, Member States and European Parliament to ensure UK traders do not, to the extent possible, face increased administrative burdens when exporting to the EU, or when sending goods from Great Britain to Northern Ireland?

We look forward to receiving your reply by 31 October.

4 EU rules on minimum VAT Rates: potential implications for the UK under the Northern Ireland Protocol⁴²

This EU document is legally and politically important because:

- the new EU VAT Rates Directive, agreed in April 2022, gives individual EU countries more flexibility to reduce or remove VAT on goods. EU rules in this area remain applicable in Northern Ireland under the Protocol on Ireland/Northern Ireland but the Government has, in its new Northern Ireland Protocol Bill, included clauses giving powers to Ministers to vary VAT (and excise duty) rates and structures in ways not otherwise permitted in Northern Ireland.
- It is unclear to what extent this new Directive would obviate the need for the powers foreseen by the Bill, or how those powers—if exercised by a Minister—could affect the UK’s access to EU trade databases that play a key part in the collection of VAT (and excise duties) on goods brought into the UK via the land border with Ireland.
- The effects of the Directive in Northern Ireland could also be affected by the substance of any negotiated settlement reached with the EU on changing the operation of the Protocol.

Action

- Write to the Financial Secretary to the Treasury (Andrew Griffith MP) to clarify the implications of the new EU VAT Rates Directive for Northern Ireland, in particular in the context of the Northern Ireland Protocol Bill.
- Draw these developments to the attention of the Northern Ireland Affairs Committee and the Treasury Committee.

Overview

4.1 Within the European Union, the [Value Added Tax Directive](#)⁴³ restricts individual Member States from reducing VAT rates for goods and services below certain minimum limits.⁴⁴ These restrictions are part of a wider EU legal framework implemented to eliminate the need for VAT-related customs controls on goods moved between Member States of the EU when the Single Market was created in the 1990s.⁴⁵ Businesses within the EU benefit

42 Proposal for a Council Directive amending Directive 2006/112/EC as regards rates of value added tax; Council and COM number: 5335/18, COM(18) 20 + ADDs 1 -3; Legal base: Article 113 TFEU; special legislative procedure; unanimity; Department: Treasury; Devolved Administrations: Consulted; ESC number: 39448.

43 [Directive 2006/112/EC](#), as amended.

44 Broadly speaking, the Directive requires all EU countries to apply a standard VAT rate of 15% to all goods and services, but with certain derogations allowed. As a result, there are [significant variations in VAT rates](#) between different EU Member States.

45 The logic of the restrictions on VAT rates was that it would reduce the opportunities for Member States to engage in potentially unfair competition within the Single Market by lowering their rates, making purchasing of goods in their territory more attractive.

from a streamlined digital system to claim [VAT refunds](#) on cross-border purchases, where non-EU business rely on an older paper-based system. In addition, the arrangement also includes the ‘VAT Information Exchange System’ (VIES) through which EU countries exchange data on business transactions reported within their jurisdiction, to detect cross-border movements of goods within the EU and ensure VAT is not evaded.⁴⁶ The EU also operates a separate ‘Excise Movement and Control System’ (EMCS) for alcohol, tobacco and fuel, which often attract significant additional duty above and beyond VAT, and sales of which are therefore at even higher risk of tax evasion. VAT-related customs controls [remain in place](#) for goods brought into an EU country from outside the European Union.

4.2 With respect to EU legal restrictions on minimum VAT rates, the European Commission proposed a [significant overhaul](#) of the current EU approach to minimum VAT rates in 2018. After more than three years of negotiations, in December 2021, EU Finance Ministers reached [provisional agreement](#) on this new ‘VAT Rates Directive’, which was [formally approved](#) in April 2022 and entered into force that month.⁴⁷

4.3 As we described in more detail in our [Report of 23 February 2022](#),⁴⁸ the new legislation—broadly speaking—gives individual EU countries the ability to drop VAT rates lower than currently allowed, but only for a limited set of goods and services.⁴⁹ As was previously the case, EU countries will be able to apply two reduced rates of VAT between 5% and 15% to a specific ‘positive list’ of goods and services, rather than the standard rate of at least 15%.⁵⁰ In addition, there is now a new exceptionally reduced rate, which can be set below 5% or even zero. Generally, EU countries can now apply such a rate only to a specific sub-set of goods and services on the aforementioned ‘positive list’. However, it can also be applied to other goods and services to which they were already applying a rate below 5% (typically based on a ‘stand-still’ exemption that permitted reduced rates that were already in effect when the EU first harmonised VAT rates in the 1990s).⁵¹ However, to limit the proliferation of exemptions and rates, by 2032 all Member States will have to reduce the number of instances to which they apply the exceptionally reduced VAT rate of below 5% to no more than 7 categories of goods and services. Similarly, reduced rates between 5 and 15% would have to be limited to no more than 24 categories of goods and services by that point. That also applies to the previous ‘stand-still’ rates: these can be maintained, but only insofar as they respect these numerical restrictions.⁵²

4.4 The UK of course left the EU on 31 January 2020, but nevertheless the EU’s new VAT Rates Directive remains relevant. This is because Article 8 of the [Protocol on Ireland/Northern Ireland](#) in the [Withdrawal Agreement](#) on the UK’s exit from the EU requires the

46 VIES is also used as a public tool to allow for the verification of VAT numbers of companies within the EU.

47 [Council Directive \(EU\) 2022/542](#) of 5 April 2022.

48 European Scrutiny Committee, chapter 2, [Eighteenth Report of Session 2021–22](#) (HC 121–xvii)

49 That list—in Annex III of the Directive—has been [updated and expanded](#), for example by allowing a reduced rate to be applied to solar panels and live horses.

50 However, that list has been [updated and expanded](#), for example by allowing a reduced rate to be applied to solar panels and live horses. The list is contained in Annex III to Directive 2006/112/EC, as amended.

51 This is why, for example, the UK could continue to apply an existing zero-rate food for VAT purposes even though the Directive did not otherwise permit this. Under the new VAT Rates Directive, exemptions that are currently country-specific will be made available to all Member States.

52 The overall impact of the new legislation on existing rates across the EU is not yet clear, but a group of tax experts has [warned](#) that the new Directive is a “huge policy mistake” because it may lead to increased use of VAT reductions to “achieve social and distributional aims [...] despite the strong evidence against the effectiveness” of using a sales tax system in that way. See Tax Notes, [‘The EU Council’s new agreement on VAT rates is a poisonous gift to Member States, citizens and businesses’](#) (accessed 30 June 2022).

UK to continue applying EU rules on VAT “concerning goods” in Northern Ireland for the time being (but no longer in Great Britain), to avoid the need for VAT-related customs controls on the land border with Ireland.⁵³

4.5 As such, EU rules on minimum VAT rates for goods (but not services)⁵⁴ continue to apply in Northern Ireland. In addition, to reflect the fact there are no customs controls on the land border, the UK retains access to the EU’s VIES and EMCS systems in respect of goods moving in either direction between Northern Ireland and the EU. This gives HMRC insight into EU goods imported into Northern Ireland via the land border that might otherwise go undetected, and helps it enforce the relevant VAT and excise duty obligations. VIES and EMCS are no longer used for trade in goods between Great Britain and the EU, where import VAT formalities are applied as part of the customs clearance process at the border instead. Article 8 of the Protocol also allows the UK and EU to jointly agree legally-binding measures to alter the application of EU VAT rules in Northern Ireland “taking into account [its] integral place in the United Kingdom’s internal market”. No such “measures” have been adopted to date, and it is not clear if the Government has proposed any to the EU.

4.6 Under the Protocol, *new* EU rules on VAT rates on goods also apply automatically in Northern Ireland when they take effect.⁵⁵ As we discussed [Eighteenth Report of Session 2021–22](#),⁵⁶ it is unclear how the application of the new EU VAT Rates Directive (in particular the numerical restrictions on categories of goods that can benefit from reduced or zero rates) could require changes to existing VAT rates in Northern Ireland. Making such an assessment is complex.⁵⁷ By extension, *if* the UK were legally obliged under the Protocol to make such changes, that could potentially trigger differentiation with the rest of the UK if rates in Great Britain were not kept in lockstep with those required in Northern Ireland.⁵⁸ We note, for example, that when the UK was required to increase fuel duty on aviation gasoline (AvGas) in Northern Ireland in January 2021 because of

53 See Article 8 of the Protocol on Ireland/Northern Ireland. Among other things, Article 8 requires alignment in Northern Ireland with EU VAT rules “concerning goods”. In practice, this means for example that [import VAT processes](#) apply to goods brought into Northern Ireland from the rest of the UK (and other non-EU jurisdictions), while Northern Irish businesses can send goods to the EU without having to comply with import VAT formalities.

54 As the Protocol only covers trade in goods, VAT rates on services in NI are governed by UK, not EU, law.

55 See Article 13(3) of the Protocol on Ireland/Northern Ireland, which states that “where this Protocol makes reference to a Union [EU] act, that reference shall be read as referring to that Union act as amended or replaced”.

56 European Scrutiny Committee, chapter 2, [Eighteenth Report of Session 2021–22](#) (HC121–xvii).

57 Determining the potential impact of the new Directive for Northern Ireland requires an assessment of existing VAT rates in the UK and to what extent these might still be permitted under the new EU rules. For example, the categories of goods to which a rate below 15% can be applied will be subject to a numerical limit by 2032. It is unclear if the current range of reduced and zero rates of VAT applied by the UK would, in Northern Ireland, be impacted by these new limits.

58 EU VAT rules are no longer binding in Great Britain, unlike in Northern Ireland. The Protocol does not constrain VAT laws in England, Scotland and Wales, including as regards minimum rates (although the Government has not, to date, announced any substantial VAT reforms following Brexit). However, if the new EU rules did in the future require changes to VAT rates in Northern Ireland, the Government would be faced with the choice of aligning those rates across the UK under the limitations imposed by EU law, or accepting VAT rate differentials between different parts of the UK. The former would fetter the UK’s post-Brexit regulatory autonomy, while the latter could trigger shifts in consumption and production patterns if individuals and businesses seek to shift activity to the jurisdiction (be it Northern Ireland or in Great Britain) with the lower rate of VAT on specific goods. Rate differentials may also open opportunities for intra-UK VAT evasion or fraud.

the continued application of the EU Energy Taxation Directive under the Protocol, the Government [chose to introduce the required increase UK-wide](#), and not just in Northern Ireland.⁵⁹

Protocol talks with the EU and the Northern Ireland Protocol Bill

4.7 However, exactly *how* the new EU VAT rules could affect Northern Ireland and the UK’s wider internal market remains unclear: the Government is seeking to change how the Protocol works, including reducing the extent of Northern Ireland’s alignment with EU VAT law. In particular, the Government is seeking a new, negotiated arrangement with the EU that changes to the way the Northern Ireland Protocol works to give it “the freedom to set VAT [...] rates and structures right across the UK” (rather than being constrained, in respect of Northern Ireland, by EU law). In a [Command Paper of July 2021](#),⁶⁰ it said the application of the VAT provisions of the Protocol have caused “problems in some areas”, citing “VAT [second-hand margin scheme](#)⁶¹ and requirements for eCommerce traders”.⁶² It also added that “these issues may multiply as UK and EU VAT [...] rules evolve”.⁶³ Subsequently, the Government also noted that the Protocol prevented it from fully extending a new VAT relief on energy-saving materials, including solar panels, to Northern Ireland.⁶⁴

4.8 Talks with the EU which have been on-going intermittently since autumn 2021 have not yet produced a negotiated settlement. Since we last considered the EU VAT Rates Directive, the Government has also published its [Northern Ireland Protocol Bill](#), introduced in the House of Commons on 13 June 2022. The Bill, if enacted, would effectively dis-apply significant parts of the Protocol in UK law, or give Ministers powers to do so in the future by means of regulations, in absence of an agreement with the EU. With respect to Article 8 of the Protocol, clause 17 would allow the Treasury by means of Statutory Instruments to change the VAT (and excise duty) rates in Northern Ireland in UK law, in ways not permitted by the Protocol. In addition, clause 15 would allow Ministers to make all or part of Article 8 of the Protocol “excluded provision”, which would mean that any ‘excluded’ EU VAT law would not have effect automatically in UK law and would no longer have precedence over incompatible domestic legislation. In the interim, EU law under Article 8 of the Protocol continues to apply in domestic law in Northern Ireland under section 7A of the European Union (Withdrawal) Act 2018. A [policy paper](#)⁶⁵ outlining the Government’s legal position on the Bill states that the doctrine of “necessity” provides it with a basis in

59 HM Revenue & Customs, ‘[Fuel duty—aviation gasoline \(AvGas\) rate](#)’ (January 2021).

60 HM Government, ‘[Northern Ireland Protocol: the Way Forward](#)’ (CP 502, July 2021).

61 This relates to the ability to charge less VAT on sales of second-hand vehicles, which under EU law as it applies under the Protocol can only be done where the vehicle is from within the EU or Northern Ireland (and not from the rest of the UK).

62 The EU in 2021 [changed its rules](#) for the accounting for VAT on goods bought by consumers in the EU (and Northern Ireland) from outside the EU VAT area, including Great Britain.

63 The Command Paper cites two examples where Northern Ireland’s alignment with VAT rules has caused issues: the application of the VAT second-hand margin scheme (for second-hand vehicles); and requirements for e-Commerce traders.

64 Conversely, the Government was able to [introduce a new zero-rate of VAT for women’s sanitary products](#) in January 2021 across the UK (despite such products typically being subject to at least the reduced rate under the VAT Directive). This was possible because the Protocol allows rates in Northern Ireland to be aligned with those applicable in Ireland, where such a zero-rate was already in effect, even if this would cause the VAT rate in Northern Ireland to fall below the minimum otherwise required by EU law (and, of course, post-Brexit, the UK can freely vary rates applicable in Great Britain).

65 HM Government, ‘[Policy Paper: Northern Ireland Protocol Bill: UK government legal position](#)’ (13 June 2022).

international law to justify the “non-performance” of certain legal obligations under the Northern Ireland Protocol, rather than using the “safeguard mechanism” for suspending obligations set out in Article 16 of the Protocol itself.⁶⁶

4.9 We will not dwell here on the general substance of the Government’s Bill, but in the area of VAT specifically some specific issues may arise that we believe merit further assessment. In particular, should the Government legislate for reduced VAT rates in Northern Ireland in ways not permitted by EU law (and without a negotiated settlement with the EU to alter the operation of the Protocol), it is not clear whether the EU would continue to allow HMRC to access the VIES and EMCS systems with respect to goods sent from the EU to Northern Ireland, or if the ability of Northern Irish businesses to use the EU’s digital system for VAT refunds. The Government appears to envisage those legal arrangements under the Protocol would not be affected in such a scenario, having [expressed](#) a desire to “maintain the existing arrangements in the Protocol on VAT and excise to support trade on the island of Ireland”.⁶⁷

Conclusions and action

4.10 Due to Article 8 of the Northern Ireland Protocol, the ramifications of the new EU VAT Rates Directive for Northern Ireland and the UK are potentially significant. However, it is unclear to what extent the Directive, by introducing new flexibilities for reduced or zero rates of VAT alongside numerical restrictions on those flexibilities, would require changes to VAT rates in Northern Ireland if applied there in full. Moreover, the Government may obtain powers under the Northern Ireland Protocol Bill to vary rates of VAT (and excise) in Northern Ireland in ways not permitted (even considering the new flexibilities recently agreed by the EU), even without successful negotiations with Brussels on altering the operation of the Protocol.

4.11 Of course, we cannot know at this stage if the Bill will become an Act of Parliament with its clauses relating to Article 8 of the Protocol substantially unchanged. Even if they do, changes to the operation of EU VAT rules under Article 8 in UK law would require further regulations by Ministers, the hypothetical content of which are unknown to us at present. We also note that the Government has recently announced a renewed joint effort with the EU recently to reach a negotiated settlement on changes to the operation of the Protocol, which could also impact on the application of Article 8 and, by extension, the EU VAT Rates Directive.

4.12 In light of the above, we cannot come to any definitive conclusions about the impact of the new EU VAT Rates Directive for the UK at this stage. We remain of the view that, if the Directive were to require changes to VAT rates in Northern Ireland, that would present the Government with a potentially difficult choice of aligning those rates across the UK under the limitations imposed by EU law, or accepting VAT rate differentials between different parts of the UK. The former would fetter the UK’s post-Brexit regulatory autonomy, while the latter could trigger shifts in consumption and production patterns if

66 The Government’s [legal position](#) states that it is “the Government’s assessment that the situation in Northern Ireland constitutes a state of necessity is without prejudice to the UK’s right to take measures under Article 16 of the Protocol to safeguard against serious economic, societal or environmental difficulties that are liable to persist, or to diversion of trade”.

67 Foreign, Commonwealth & Development Office, “[Policy paper: Northern Ireland Protocol: the UK’s solution](#)” (13 June 2022).

individuals and businesses seek to shift activity to the jurisdiction (be it Northern Ireland or in Great Britain) with the lower rate of VAT on specific goods. Rate differentials may also open opportunities for intra-UK VAT evasion or fraud. A decision to proceed with unilateral dis-application of EU restrictions on VAT rates in Northern Ireland would, however, raise potential issues relating to tax fraud and evasion if the UK were to lose access to EU systems that help HMRC keep track of goods entering Northern Ireland across the land border without customs controls. That risk is not addressed in the Northern Ireland Protocol Bill or the accompanying policy papers.

4.13 We have therefore written to the Financial Secretary to the Treasury to obtain more information on the implications of the EU VAT Rates Directive for the UK. In particular, given the uncertainties around the use of the powers foreseen by the Bill to unilaterally dis-apply elements of EU VAT law in Northern Ireland, we are asking for an assessment of how the new EU rules, if they had to be applied in Northern Ireland in full, could affect VAT rates there. That may also strengthen the Government’s case for the need for Northern Ireland to benefit from additional flexibilities under the Protocol with respect to VAT as part of a negotiated settlement with the EU. Secondly, we are keen to get more information from the Minister about the potential implications of the UK unilaterally dis-applying elements of EU VAT law as still in effect in Northern Ireland under the Protocol for other VAT-related arrangements, such as access to VIES.

Letter from the Chair to the Financial Secretary to the Treasury (Andrew Griffith MP)

We have previously written to you in relation to the new EU VAT Rates Directive, concerning the potential implications for the UK if the new EU rules on minimum VAT rates had to be applied in Northern Ireland (NI) under Article 8 of the Protocol on Ireland/Northern Ireland.⁶⁸

With the new EU rules now formally adopted, and the Government’s Northern Ireland Protocol Bill before Parliament, we believe this is a timely juncture to obtain further information from you on the potential implications of the new Directive for the UK. We note that clause 17 of the Bill would allow the Treasury to change, by regulations, the incidence of VAT (and excise duty) in NI in ways not permitted by EU law as it applies in Northern Ireland under the Protocol, for example to allow the recent VAT reductions on energy-saving materials to be extended fully to NI. We understand that clause 15 could be used to make EU VAT and excise rules under Article 8 more broadly “excluded provision” in UK law, allowing them to be overridden by other domestic legislation.

First, with the Bill still progressing through the parliamentary process, it is not yet certain if the powers foreseen by clauses 15 and 17 will be enacted and, even if so, how the Government intends to use them in practice. In the interim, EU law under Article 8 of the Protocol continues to apply in domestic law in NI under section 7A of the European Union (Withdrawal) Act 2018. Given these uncertainties, we would be grateful for your Department’s assessment of how the new EU rules, if they *did* have to be applied in NI in full, could affect VAT rates there.

68 EU document 5335/18, COM(18) 20; ESC number: 39448. Adopted as [Council Directive \(EU\) 2022/542](#) on 5 April 2022.

- Would the new flexibilities introduced by the VAT Rates Directive for Member States, and the UK in respect of NI, to introduce more reduced or zero-rates address the issues which clause 17 of the Bill is meant to address? If not, why not? Are there any circumstances under which the Government would accept that EU law *should* restrict the UK’s ability to the incidence of VAT and excise duty in Northern Ireland?
- What proposals has the Government made for the adoption of “measures” by the UK/EU Joint Committee under Article 8 of the Protocol to take “into account Northern Ireland’s integral place in the United Kingdom’s internal market”, and how has the EU responded if any have been made?
- Notwithstanding the powers envisaged under the Northern Ireland Protocol Bill, if the Directive *did* have to be applied in NI in full, could this lead to any changes, in particular increases, in VAT rates there? To what extent do the UK’s existing reduced and zero-rates exceed the numerical limits the Directive will impose from 2032? Does the new EU VAT Rates Directive allow the UK to zero-rate energy bills in NI? If the assessment necessary to fully answer these questions is still on-going, it would be helpful to know when it is expected to be completed.
- What representations did the Government make to the EU to highlight the potential implications of the Directive for VAT rates in NI under the Protocol? Were any specific UK concerns articulated and, if so, how did the EU respond?

Secondly, we are keen to get more information about the potential implications of the UK unilaterally dis-applying elements of EU VAT law as still in effect in NI under either clause 15 or 17 of the Northern Ireland Protocol Bill.

- Is it the Government’s expectation that, if Ministers made regulations under clauses 15 or 17 of the Bill to dis-apply elements of EU VAT or excise law in NI, UK access to the EU’s VAT Information Exchange System (VIES) and Excise Movement & Control System (EMCS) under the Protocol would not be affected?
- If, irrespective of the Government’s ambitions, the EU were to switch off UK access to those systems in respect of NI in response to such regulations, what assessment has been made of the impact on tax evasion on goods brought into NI across the land border? What contingency arrangements would be introduced instead to ensure HMRC has sufficient insight into movements of goods across the border?

We look forward to receiving your reply by 1 September. I am copying this letter to Simon Hoare MP, Chair of the Northern Ireland Affairs Committee and Stephen Habberley, Clerk of that Committee; to the Rt Hon. Mel Stride MP, Chair of the Treasury Committee and to Kenneth Fox, Clerk of that Committee; to Lord Kinnoull, Chair of the House of Lords European Affairs Committee, and to Nick Boorer, that Committee’s Clerk; to Victor Peluola and Patrick Lynch at your Department; and to Les Saunders at the Cabinet Office.

5 Documents not considered to be legally and/or politically important

(42112) Commission Delegated Regulation (EU) 2022/1644 of 7.7.2022
— supplementing Regulation (EU) 2017/625 of the European Parliament and
of the Council with specific requirements for the performance of official
controls on the use of pharmacologically active substances authorised as
C O M (2 0 2 2) veterinary medicinal products or as feed additives and of prohibited or
4400 unauthorised pharmacologically active substances and residues thereof.

Annex

Documents drawn to the attention of select committees:

(‘SNC’ indicates that scrutiny (of the document) is not completed; ‘SC’ indicates that scrutiny of the document is completed)

Environment, Food and Rural Affairs Committee: Northern Ireland Protocol: Equivalence of seed potatoes [Proposed Decision]

Environmental Audit Committee: Fluorinated Greenhouse Gases [Proposed Regulation]

International Trade Committee: Reform of the EU Customs Union and the EU Single Customs Window [Proposed Regulation]

Northern Ireland Affairs Committee: EU rules on minimum VAT Rates: potential implications for the UK under the Northern Ireland Protocol [Proposed Council Directive]; Fluorinated Greenhouse Gases [Proposed Regulation]; Northern Ireland Protocol: Equivalence of seed potatoes [Proposed Decision]; Reform of the EU Customs Union and the EU Single Customs Window [Proposed Regulation]

Public Accounts Committee: Reform of the EU Customs Union and the EU Single Customs Window [Proposed Regulation]

Scottish Affairs Committee: Northern Ireland Protocol: Equivalence of seed potatoes [Proposed Decision]

Treasury Committee: EU rules on minimum VAT Rates: potential implications for the UK under the Northern Ireland Protocol [Proposed Council Directive]; Reform of the EU Customs Union and the EU Single Customs Window [Proposed Regulation]

Welsh Affairs Committee: Northern Ireland Protocol: Equivalence of seed potatoes [Proposed Decision]

Formal Minutes

Wednesday 12 October 2022

Members present:

Sir William Cash, in the Chair

Mr John Baron

Jon Cruddas

Margaret Ferrier

Mr David Jones

Craig Mackinlay

Gavin Robinson

Greg Smith

Document scrutiny

Draft Report, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 5 read and agreed to.

Resolved, That the Report be the Eighth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Adjournment

Adjourned till Wednesday 19 October 2022 at 1.45 pm

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*)

[John Baron MP](#) (*Conservative, Basildon and Billericay*)

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

[Geraint Davies MP](#) (*Labour, Swansea West*)

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

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

[Margaret Ferrier MP](#) (*Independent, Rutherglen and Hamilton West*)

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

[Dame Margaret Hodge MP](#) (*Labour, Barking*)

[Adam Holloway MP](#) (*Conservative, Gravesham*)

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

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

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

[Gavin Robinson MP](#) (*Democratic Unionist Party, Belfast East*)

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